United States Court of Appeals

for the Second Circuit

APPENDIX

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74-1408

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United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,
Appellee,

v.

G. CARMAN RIDLAND,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX.

IRWIN KLEIN, P. C.,
Attorney for Defendant-Appellant,
G. Carman Ridland,
Two Park Avenue,
New York, N. Y. 10016
MU 3-0054.

PAUL J. CURRAN,
United States Attorney,
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New York, N. Y. 10007
264-6377.

UNITED STATES COURT OF APPEALS
FILED
MAY 13 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1974

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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

- -X

UNITED STATES OF AMERICA,

Appellee,

v.

G. CARMAN RIDLAND,

Defendant-Appellant.

- -X

DOCKET ENTRIES.

7-9-73	Filed Indictment and ordered sealed -- Stewart, J.
7-19-73	Indictment ordered unsealed. Stewart, J.
7-30-73	Adjd. to 8-8-73 Ward,J.
8-6-73	G.CARMAN RIDLAND- Filed Appearance Bond in the amt. of $10,000. secured by $1,000. cash, Receipt # 25606.
8-6-73	DOMINIC BASSANI- Pleading adj'd. until Aug.13-73. Case Assigned to Judge Gurfein. WARD,J.
8-6-73	JOHANNES STERL - Deft (Atty.Present) Pleads Not Guilty. 10 dyas for motions. Deft. ordered fingerprinted and photographed. Deft. R.O.R. case assigned to Judge Gurfein. WARD,J.
8-6-73	ARNOLD WIDLITZ - Deft. (atty present) pleads Not Guilty. 10 days for motions. Deft. ordered fingerprinted and photographed. Deft.Cont'd.R.O.R. WARD,J.

DOCKET ENTRIES

DATE	PROCEEDINGS
	Pleads (Not Guilty)
-73	G. CARMAN RIDLAND- Deft (Atty.Present) bail fixed at $10,000 P.R.B. secured by $1,000.Cash. Deft. has 48 hrs. to post bail.Bail limits to include Contentinental U.S. and British Columbia Canada. Assigned to Judge Gurfein. WARD,J.
-73	JOHANNES STEEL - (Atty.present) Oral appliaction for extension of time in which to file motion is Granted, motions are returnable Sept. 10,1973. WARD,J.
-73 *	ROBERT FEIS - Deft. (Atty present) Pleads NOT GUILTY. Deft. R.O.R. Ordered finger-printed and photographed. 10 days for motions. WARD,J.
-73	FEIS SECURITIES Co.- Deft (thru Robert Feis)(Atty.present) PLEADS NOT GUILTY -10 days for motions. WARD,J.
3-73	DOMINIC BASSANI - Marked off calendar. WYATT,J.
.14,73	DOMINIC BASSANI-Atty. present, ~~withdraws his plea of not guilty~~ Deft and plea GUILTY to #1 only. Presentence report ordered. Sentence adjourned to Oct. 12, 1973. Bail Continued. Rights Waiver signed. -GURFEIN,J.
.14,73	DOMINIC BASSANI-Filed an acknowledgement of constitutional rights.
.14,73	JOHANNES STEEL-Filed Notice of Motion for an order (1) dismissing Indictm or dismiss cts. 2 thru 6, (2) for severance, (3) for disclosure and to produce all evidence.
.14,73	JOHANNES STEEL - Filed Memorandum of Law reference to above Motion.
-10-73	RIDLAND- Filed defts notice of motion that deft. Ridland adopts as part of this motion those sections of the motion filed by deft. Steel, to the extent they are applicable to deft. Ridland.
t-11-73	ROBERT FEIS and FEIS SECURITIES Co.- Filed the following papers: 1) affdvt. and notice of motion for an order severing defts. 2) affdvt. and notice of motion for discovery & inspection 3) motion to adopt pre-trial motions and supporting memoranda of other defts. 4) memorandum of law in support of pre-trial motion.
ct-10-73	WIDLITZ- Filed defts notice of motion for an order dismissing the indictment and dismissing counts 2 thru 6 on grounds that these grounds are multiplicitious, or in the alternative, ordering the counts consolidated into one single count. - ret. 10-23-73 at 2 PM.
.7-73	Filed govts. affdt. by Elliot G. Sagor in oppositionto defts. motions for dismissal of the indictment,consolidation of counts,severance, discovery and inspection a bill of particulars and other relief
.7-73	Filed govts. memorandum of law.
ov.13-73	STEEL--filed affdt. of Joseph E. Brill(atty. for deft.).This reply affdt. is in further support of Mr. Steel's pre trial motions and in reply to the prosecution's opposing papers.
	Filed transcript of record of proceedings, dated Sept. 14, 1973.
	Filed transcript of record of proceedings, dated Sept. 17, 1973.
ec.7-73	ROBERT FEIS & FEIS SECURITIES CO.--Filed Order of Substitution of Attorneys - Myron [illegible] 450 Park Avenue, N.Y. 10022- 832-2530 -- Gurfein,J.

DOCKET ENTRIES

DATE	PROCEEDINGS
Dec.12-73	Filed OPINION #40111--The motion to dismiss the indictment for failure adequately to apprise the defts. of the charges against them is denied.- Motion on behalf of all defts to dismiss counts two through six, is denied. The motion to sever is denied. Bill of Particulars-Steel-Granted items consented by Govt., also Steel is entitled to oppose Govt. as follows: 1-7: 11: 12: 13: 14(b): 18: 20 (as to whom)29: 30a)b)c): 31: 34(b)(d): 37 (as to names) 38 (as to names) 46: 47 In all other respects motion is denid. Feis-granted as consented also granted 52a)53(2) (4) 54(3). In all other respects motion is denied. Ridland-Granted consented also granted 56: 59(d) (as to names) In other respects motion is de Discovery - STEEL- Granted to the extent consented by Govt. In all other res denied. FEIS-The remainder will be denied except as consented to. BRADY- defts motion for production of material will be granted to the extent that Govt. knows that it has material which is now required to proper defense of ...However, I will not go so far as to compel impeachment evidence at this t So ordered - Gurfein, J.(m/n)
Dec.18-73	Filed Government Supplementary Affidavit of Elliot Sager regarding deft. Feis.
Dec-26-73	Filed Governments Bill of Particulars.
Jan- 9-74	G. CARMEN RIDLAND- Filed notice of appearance by Eugene Cobert, 2 Park Ave., NYC (MU 3-0054)
Jan.4-74	FEIS SECURITIES CO. - Government moves to Dismiss - Granted - Gurfein, J. JOHANNES STEEL G. CARMAN RIDLAND, ROBERT FEIS - Jury Trial begun before GURFEIN,J
Jan.7-74	Trial continues
Jan.8-74	Trial continues
Jan.9-74	Trial continues
Jan.10-74	Trial continues - Non Jury identification Hearing held.
Jan.11-74	Identity Hearing continues and concluded (acceptable)-Trial continues
Jan.14-74	Trial Continues
Jan.15-74	Trial continues
Jan.16-74	Trial continues
Jan.17-74	Trial continues
Jan.18-74	Trial continues
Jan.21-74	Trial continues
Jan.22-74	Trial continues - Jury Deliberates - Verdict as to Deft STEEL NOT GUILTY Jurors excused until 10:00 A.M.
JAN.23-74	Deft. STEEL Discharged.
Jan.23-74	Jury resumes deliberations. Jury Verdict Deft RIDLAND GUILTY as charged. FEIS GUILTY as charged. Pre sentence report ordered as to both Defendants. Sentences adjourned to March 7, 1974 at 10:00 A.M. in Room 1505. Bail status continued as to both Defts. RIDLAND & FEIS - GURFEIN, J.

DOCKET ENTRIES

DATE	PROCEEDINGS
Jan.25-74	G. CARMAN RIDLAND - Filed for deft. Voir Dire.
Jan.25-74	Filed Government's request Voi Dire questinning of Prospective Jurors.
Jan.25-74	Filed Examination on the Voir Dire
Jan.30-74	Filed Notice of Motion for an order of protection preculiding the Government from altering the Grand Jury Testimony and indictment and striking portions of Govt. bill of particulars
Jan.31-74	Filed transcript of record of proceedings, dated 12-31-73
Feb.11-74	DOMINIC BASSANI - Filed JUDGMENT (atty present) It is adjudged that the defendant is sentenced to TWO (2) YEARS on count 1. Execution of the prison sentence is suspe and the defendant is placed on probation for a period of ONE (1) YEAR, subject t the standing probation order of this Court. Counts 2 through 6 are dismissed on motion of defendant's counsel with the consent of the Government. - Gurfein, J. (copies issued)
3-7-74	ROBERT FEIS - Filed JUDGMENT (atty present) It is adjudged that the deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period for a period of THREE(3) YEARS on each of Counts 1, 3,4,5,6 to run concurrently with each other. Pursuant to Section 3651 of Title U.S.Code, as amended, with provision deft. be confined in a JAIL or TREATMENT type institution for a period of FOUR (4) MONTHS as provided in the aforesaid section. Execution of remainder of sentence is suspended and the defendant is placed on probation, to commence upon expiration of confinement and subject to the standing probation order of this Court. Term of probation to run concurrently with the remainder of sentence imposed by Hon. Constance B. Motley on September 5, 1973 on Indictment #73 Cr.79 in this Courthouse. -- GURFEIN,J. (copies issued)
3-7-74	G.CARMAN RIDLAND - Filed JUDGMENT (atty.present) Itis adjudged that the defendant is hereby committed to the custody of the Attorney General or authorized representa for imprisonment for a period of THREE (3) YEARS On each of counts 1,2,3,4,5,6 to run concurrently with each other. Pursuant to Section 3651 of Title 18, U.S.Code as amended, with provision defendant be confined in a JAIL or TREATMENT type institution for a period of FOUR (4)MONTHS as provided in the aforesaid section. Execution of remainder of sentence is suspended and the defendandt is placed on probation for a period of TWO (2) YEARS and EIGHT(8) MONTHS, to commence upon expiration of confinement and subject to the standing probation order of this Cou The court requests the cooperation of the Probation Department to arrange for Defts. supervision in the Dominion of Canada.--GURFIEN,J. (copies issued)
3-15-74	ROBERT FEIS - Filed Notice of Appeal from the final judgment of conviction entered 3/
3-15-74	G. CARMAN RIDLAND- Filed Notice of Appeal from the final judgment of conviction ente

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By M. Gilgried
Deputy Clerk

INDICTMENT.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

- -X

UNITED STATES OF AMERICA,

v.

DOMINIC BASSANI, JOHANNA STEELE, ARNOLD WIDLITZ, G. CARMAN RIDLAND, ROBERT FEIS, AND FEIS SECURITIES CO.,

Defendants.

- -X

The Grand Jury charges:

1. From on or about the 1st day of June, 1970, up to and including the 30th day of November, 1970, in the Southern District of New York and elsewhere, DOMINIC BASSANI, JOHANNA STEELE, ARNOLD WIDLITZ, G. CARMAN RIDLAND, ROBERT FEIS, and FEIS SECURITIES CO., the defendants, and other co-conspirators to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, to wit, violations of Title 15, United States Code, Sections 77q, and 77x.

2. It was a part of said conspiracy that said defendants and their co-conspirators unlawfully, wilfully and knowingly, in the offer and sale of securities, to wit, the common stock of Cadgie Taylor Co., (Inc.) ("Cadgie Taylor"), by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, would and did, directly and indirectly (a) employ devices, schemes and artifices to defraud; (b) obtain money and property by means of untrue statements of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engage in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of the common stock of Cadgie Taylor.

3. Among the means by which the defendants and their co-conspirators would and did carry out the said conspiracy were the following:

a. Defendants and their co-conspirators would and did agree to cause 125,000 shares of the common stock of Cadgie Taylor to be sold in an offering to the public on

which the underwriter was the defendant FEIS SECURITIES CO., an securities broker-dealer.

b. Defendants and their co-conspirators would and did agree that in connection with the public offering of Cadgie Taylor stock approximately $40,000 in secret compensation and commissions would be paid as finders' fees and underwriting commission in addition to the underwriting compensation and expenses disclosed in a prospectus concerning the offering filed with the United States Securities and Exchange Commission.

c. Defendants and their co-conspirators would and did cause said prospectus to be used in connection with the public offering of Cadgie Taylor common stock.

d. Defendants and their co-conspirators would and did arrange the receipt and distribution of the approximately $40,000 of secret compensation.

OVERT ACTS.

In furtherance of said conspiracy, and to effect the objects thereof, the following overt acts, among others were committed in the Southern District of New York:

INDICTMENT

1. In or about early September, 1970, the defendants ARNOLD WIDLITZ and ROBERT FEIS had a conversation.

2. On or about September 15, 1970, the defendants JOHANNA STEELE and ROBERT FEIS, had a conversation.

3. On or about October 5, 1970, the defendant ROBERT FEIS delivered some money.

4. On or about October 9, 1970, the defendant DOMINIC BASSANI met with the defendant G. CARMAN RIDLAND.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH SIX.

The Grand Jury further charges:

1. From on or about the 1st day of June, 1970, to on or about the 30th day of November, 1970, in the Southern District of New York, DOMINIC BASSANI, JOHANNA STEELE, ARNOLD WIDLITZ, G. CARMAN RIDLAND, ROBERT FEIS, and FEIS SECURITIES CO., the defendants, in the offer and sale of securities, to wit, the common stock of Cadgie Taylor Co., Inc., ("Cadgie Taylor"), unlawfully, wilfully and knowingly and by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly (a) did employ devices, schemes and artifices

to defraud; (b) did obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) did engage in transactions, practices and courses of business which would operate and did operate as a fraud and deceit upon purchasers of said securities.

2. The allegations contained in paragraph 3 of Count One of this Indictment are repeated and realleged as though fully set forth herein as constituting and describing the means by which said defendants committed the offenses charged in Counts Two through Six.

3. On or about the dates hereinafter stated, in the Southern District of New York, the defendants DOMINIC BASSANI, JOHANNA STEELE, ARNOLD WIDLITZ, G. CARMAN RIDLAND, ROBERT FEIS, and FEIS SECURITIES CO., unlawfully, wilfully and knowingly and in furtherance of the scheme to defraud set forth in Paragraphs 1 and 2 of Counts Two through Six, did cause to be delivered by mail a prospectus for the sale of Cadgie Taylor stock according to the direction thereon, to the persons hereinafter set forth:

INDICTMENT

COUNT	DATE	ADDRESSEE
2	10/2/70	Loretta Feldman % Hotel Albert 23 East 10th St. New York, N.Y.
3	10/2/70	Arthur Eisenstein 3614 Avenue K Brooklyn, N.Y.
4	10/2/70	Sylvia Goldblatt % Stewart Seafoods 71 Hudson St. New York, N.Y.
5	10/2/70	Lee Solomon 70 Linder Blvd. Brooklyn, N.Y.
6	10/2/70	John J. Pelliceio 129 N. 6th St. North Pelham, N.Y.

(Title 15, United States Code, Sections 77q(a) 77x; Title 18, United States Code, Section 2)

FOREMAN

PAUL J. CURRAN

EXCERPTS FROM TRANSCRIPT.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- : 73 Cr. 659

JOHANNES STEEL, G. CARMAN RIDLAND, ROBERT FEIS and FEIS SECURITIES CO., :

Defendants.

----------x

BEFORE:

HON. MURRAY I. GURFEIN,

District Judge

New York, New York
January 4, 1974 - 10:15 a.m.

APPEARANCES:

PAUL J. CURRAN,
United States Attorney for the
Southern District of New York,
BY: ELLIOT G. SAGOR, ESQ.,
Assistant United States Attorney

JOSEPH E. BRILL, ESQ.,
Attorney for Defendant Johannes Steel,
233 Broadway,
New York, New York
-and-
JOSEPH B. EHRLICH, ESQ.,
Of Counsel.

APPEARANCES (Continued):

EUGENE O. COBERT, ESQ.,
IRWIN KLEIN, ESQ.,
Attorneys for Defendant G. Carman Ridland,
41 East 42nd Street,
New York, New York

MILLARD & GREENE, ESQS.
Attorneys for Defendant Robert Feis,
450 Park Avenue,
New York, New York
BY: MYRON J. GREENE, ESQ.,
STEVEN MARCUS, ESQ.,

HOWARD R. UDELL, ESQ.,
Of Counsel.

ALSO PRESENT:

THOMAS DOONAN, Investigator for the U. S. Attorney's office

- - -

(Jury and four alternates duly impaneled and sworn.)

AFTERNOON SESSION

2:30 p.m.

(In open court in the absence of the jury.)

MR. BRILL: Your Honor, I would like to apologize for our being detained. It is partially our fault, but the restaurants were crowded by the time we got in there.

* * *

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MR. BRILL: Excuse me.

Your Honor, I listened with a great deal of interest to what Mr. Sagor has said, but up to this time I hven't heard anything about what the Government expects to prove in this case.

THE COURT: He is coming to that, Mr. Brill.

MR. BRILL: I see.

THE COURT: I think what he is trying to do is do what I tried to do and I will do after all your opening statements are concluded, try to acquaint this jury with some of the terms and what they mean.

MR. BRILL: Rotten lemons have nothing to do with this case, for example.

THE COURT: No. But I think, as long as you've gone beyond, I am going to tell the jury right now that when a new issue comes out, ladies and gentlemen, and when I say a new issue it means new shares of stock that are issued by a company that have never been issued before, naturally, they have to sell them.

Now, they can either sell the stock themselves or they can have what is called an underwriter, or some underwriting house, as the Government says as Feis Securities was, sell it for them. They are like commission merchants.

Normally a company doesn't sell stock itself

jgrf 2 14a

because it doesn't have the facilities, it doesn't have the salesmen, it doesn't know where to go.

Now, in connection with that new issue the Government requires, under the Securities Act of 1933, that the material information concerning the company in these shares of stock should be filed with the SEC, as we call it, the Securities and Exchange Commission.

Now, that doesn't mean that the stock is good or bad. In that sense Mr. Brill is right; it isn't like squeezing a lemon.

But, on the other hand, the Government is right in that a full disclosure of material facts is required in these documents so that before a person buys the stock he will know, for example, what its history was, how much money it made, if anything, what assets it has, what its balance sheet looks like, and with other descriptive matter he's at least got a chance to try to figure out, with knowledge, whether it pays to buy the stock or not.

So it just isn't a piece of paper any more; it is a piece of paper with something behind it, this prospectus that we speak of, this little book.

And the statement that Mr. Sagor was making was that one of the things that you put into this little book, as is required by law, normally is what is the

compensation or fee or the commission, whatever you want to call it, of this underwriter who sells the stock. That is important because normally the individual who buys a new issue would want to know how much of the proceeds of the issue, how much they take in, is really going to go into the company in which he is now going to become the owner.

Because, let's assume that the underwriter took away 90 per cent of the money coming in. Then, if you gave him a dollar, you would only have ten cents in the company. That doesn't make it crooked or not crooked. It simply means that you are entitled to know.

And the Government contends in this case, as I understood the openings so far, that instead of revealing the full extent of the commissions or fees that would have to be paid so that the buyer would understand it, they also paid, as he says, on the side or under the table, whatever you want to call it, an additional sum of $40,000 which was not disclosed in this little book, this prospectus.

So that somebody looking at it wouldn't know that.

Now, does that answer you, Mr. Brill?

MR. BRILL: I think so, sir. Thank you very much.

THE COURT: In other words, they are both right in

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one sense.

MR. SAGOR: In addition to the importance of relying on the booklet, the prospectus to give you information about the company, one is oftentimes relying too on the broker, the man who sells you the stock, the way you rely on a doctor to tell you what is good and what is not good, and you can't rely on your broker when your broker is being bribed, being paid off in effect, to palm off these securities on the public, which is what happened in this case.

MR. BRILL: I object to this, if your Honor please. This is argument.

THE COURT: I think you are getting a little bit into summation.

MR. BRILL: It is.

MR. SAGOR: I am about to go on, your Honor.

MR. BRILL: I ask your Honor to instruct the jury to disregard that last statement.

THE COURT: All right. Disregard that. We will come to that later in the case, Mr. Savor.

MR. SAGOR: Furthermore, as his Honor has indicated to you, if money is paid to the underwriter, or people who sell stock to the underwriter, if it goes into their pockets, it never becomes invested in the

* * *

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Before we go on, let me tell you just very quickly that this mining company has less employees than the amount of men sitting at this table. You will hear a lot more about the so-called mining company.

At any rate, there comes a time a few days later when Mr. Ridland appears and Mr. Ridland, Mr. Steel and Mr. Feis, the three individuals over there, go to Kelly, Andrews and Bradley. Mr. Ridland, after speaking to Mr. Schiffman and others, give his approval to the deal. He is the president of the company and indicates to sell this stock, that time is growing short, they are going to make a payment to Kelly, Andrews and Bradley.

In the early part of October, unexpectedly, when Mr. Feis and Mr. Steel and Mr. Ridland come to the closing, come to an event which they think will be a closing of the deal, an event where they think the Kelly, Andrews and Bradley firm has sold the stock -- and you will hear that one of the people that had promised to sell the stock, Mr. Miller, at Kelly, Andrews and Bradley, hasn't sold the stock -- what do they do? It's about October 4th, do they return the money to some of the people that had already put up the money as they had promised in the agreement? They do not. They do not. They decide that they are going to backdate the sales that will take

place after the October 4, 1970 deadline, because on or about October 4th there is a red light, no longer the green light from the SEC to sell the stock, but they agree among themselves that they can fix up the documents a little, they could lie to the SEC a little and go on and sell this stock in October of 1970. And that is exactly what happens.

In October 1970, Kelly, Andrews and Bradley sell approximately a hundred thousand shares of Cadgie Taylor mining at $2 a share and they sell $200,000 worth. Mr. Feis sells about 25,000 shares on his own, mostly during that period, and it comes to a grand total of $250,000.

Now, in November, after the stock is sold, comes the payoff, because in November Kelly, Andrews and Bradley lets a certified check of $10,000, their commission is -- remember 10 cents a share, a hundred thousand shares equals $10,000, you will see it going into the books and records of the company -- and on or about that same day, on or about the same day they get $40,000 in a paper bag or a bag -- I forget whether it is paper or otherwise, it just doesn't matter -- from Mr. Feis, and you will see some of this money in cash going into Kelly, Andrews and Bradley.

You will also see a newspaper article from Mr. Feis where he says good things about the Cadgie Taylor stock, right on cue, coming in the latter part of --

THE COURT: You said Mr. Feis.

MR. SAGOR: Thank you, your Honor. Mr. Steel, your Honor, the author of an article. You will even see his picture, I think, in the article, Mr. Steel on Wall Street, and he will say good things about the Cadgie Taylor stock right on cue.

You will also see bank records of Mr. Feis, you will see bank records of this Sierra Silver Company I mentioned to you, you will see bank records of Cadgie Taylor, you will see bank records of Kelly, Andrews and Bradley. You will see where some ofthis money was put in this case, you will see it with your very own eyes, and you will also see where some of this money disappeared from these bank records.

Now, some ofthe witnesses in this case, the people that are going to take the stand over there to my left, were some ofthe very people that participated with these three men in this payoff and in this scheme of false statements.

Obviously they have not been models of good conduct. They have been participants in a crime and they

are not presented here as model citizens. What they can tell you is about their own criminal involvement in this scheme and what they can tell you is what they said to Mr. Feis or wh Mr. Feis said to them and what Mr. Steel said to them and what Mr. Ridland said to them, because theywere there. They participated in this very scheme itself. Without these people, without these people, we would not have a totally clear inside picture of what happened.

MR. BRILL: I object to that, if your Honor please. It may be because of these people there will not be a totally clear picture.

THE COURT: Yes. Forget that.

MR. SAGOR: This testimony, in substantial part, will be backed up by documents and other evidence in the case. You will see the bank records, you will see the telephone records, you will see Mr. Steel's newspaper and you will see other documents.

I submit to you at the end of all this, as Judge Gurfein had hinted to you or told you directly in his comments, it will all be very simple, it will all be very clear, and I submit to you that you will find these defendants guilty in this case as they are charged in the indictment.

* * *

separate elevators for jurors and there are a lot of people with big ears and I think it is very important for you not to discuss anything that you hear in court in the elevators. If you see counsel for either side, they may say good morning to you. obviously you say good morning and be polite. But don't engage in any conversation with them. They know they are not to engage in any conversation with you. If anybody should persist, and I am not talking about the lawyers now, but any person should persist in trying to talk to you about the case, you let me know immediately. Do you understand that? Not that I think anybody will.

MR. SAGOR: May we proceed, your Honor?

THE COURT: Yes. We were informed that Mrs. Knawer is ill. So we are letting her be discharged from the jury. We will proceed with a jury of three alternates.

MR. SAGOR: Your Honor, the Government calls Stuart Schiffman.

S T U A R T S C H I F F M A N, a witness called by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SAGOR:

MR. SAGOR: May we proceed, your Honor?

THE COURT Yes, please.

* * *

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gwrl 22a Schirtman-direct

Q And do you have a Bachelor of Laws degree?

A Yes, I do.

Q And were you admitted to the bar of the State of New York?

A Yes.

Q And how long did you become a practicing lawyer?

A I practiced up until July of 1970.

THE COURT: Were you admitted in '61?

THE WITNESS: In '60, your Honor.

THE COURT: And you practiced until when?

THE WITNESS: July of '70.

Q And did you become employed in July of 1970 at a brokerage firm called Kelly, Andrews and Bradley?

A That's correct.

Q In what capacity?

A I became connected with the firm in July of 1970 and I was president of the firm from the time of my employment there. Prior to that I had done legal work for the firm.

Q What is the address of Kelly, Andrews and Bradley?

A It was 111 John Street in Manhattan.

Q Can you tell the members of the jury what

kind of firm Kelly, Andrews and Bradley was?

A It was a stockbrokerage firm. It was a member of the National Association of Securities Dealers as opposed to a member firm of the New York or American Exchange. It dealt in over-the-counter securities.

Q Can you explain to the members of the jury what over-the-counter means?

A Well, over-the-counter securities are stocks of companies that trade over the counter, usually do not have the requirements to be listed on one of the national exchanges, such as the New York Exchange. Generally they are new companies or companies without the earnings or assets to trade on the American or New York Exchange.

THE COURT: What is the counter?

THE WITNESS: That is what it is called.

Those securities other than trading on a national exchange are traded on what is called the counter or over-the-counter trading.

THE COURT: In other words, to see if I understand it, there are certain stocks which are listed, as they call it, on the New York Stock Exchange and the American Stock Exchange and so on?

THE WITNESS: Yes.

THE COURT: And those stocks are sold

generally by brokers on the floor of those exchanges who match bid and ask and then they sell it on the floor, is that right?

THE WITNESS: That's correct.

THE COURT: Now, there are other stocks, is that correct, which are not listed on those exchanges and those are called over-the-counter stocks colloquially, is that correct?

THE WITNESS: Correct, your Honor.

THE COURT: And those stocks are sold by one broker calling up another broker on the phone, is that right?

THE WITNESS: That's correct.

THE COURT: And saying, "Joe, I have a hundred shares of so and so which I want 18 for," and the other fellow says, "I will give you 17" and they settle for 17-1/2, is that about the idea?

THE WITNESS: More or less it's correct, your Honor.

THE COURT: Where it is incorrect tell me because I am not testifying, but on these background things I want to make sure the jury understands exactly what we are talking about.

Was the business that you engaged in where

you bought for your own account your own shares or did you merely act as a broker on a commission basis?

THE WITNESS: Both.

THE COURT: Is that typical of brokerage houses that deal in the so-called over-the-counter market?

THE WITNESS: The majority of them do that, yes.

THE COURT: Are you getting to the pink sheets and all that?

MR. SAGOR: No, your Honor. I think we may not come to the pink sheets in this case.

THE COURT: In any event, let me ask you so the jury understands it. In the case of the stock market, let's say the New York Stock Exchange, quotations appear daily, do they not, in the New York Times and other papers, Wall Street Journal and so on, which show the price at which the securities were sold and the volume of those securities, is that right?

THE WITNESS: That's correct.

THE COURT: In the case of over-the-counter stock, is it true that the broker who belongs to the NASD, as you say, which your firm did, report the prices at which they are willing to buy and willing to sell a particular stock or security, is that right?

THE WITNESS: That's correct, your Honor.

THE COURT: And these appear in what are called pink sheets, is that right?

THE WITNESS: That's right.

THE COURT: Which are circulated among over-the-counter brokers, is that correct?

THE WITNESS: Yes, sir.

THE COURT: Go ahead. I am sorry to interrupt. We will have to in this case, ladies and gentlemen, and if there is something you don't understand raise your hand and we will know there is something which should be explained a little more.

BY MR. SAGOR:

Q Mr. Schiffman, in line with the questions you have just answered, could you explain to the members of the jury the distinction between the sale by Kelly, Andrews and Bradley of a stock that is already on the market and the underwriting function for the sale of a security that has not yet come on the market?

A The trading of stocks that are already on the market, as you call it, or selling or trading over-the-counter, can be done in two ways, either buying or selling the stock from another over-the-counter brokerage firm for your own account, in which case you would be

acting as a dealer, or you could buy or sell the security for the account of a customer, in which case you would be acting as a broker.

THE COURT: Just let me interrupt for a minute. When you say you buy for your own account, does that mean you own the stock and you put it on the shelf, as it were, like a groceryman does when he buys some cans of vegetables.

THE WITNESS: That is right.

THE COURT: It becomes your inventory, your stock in trade?

THE WITNESS: That is correct.

Q And sometimes, to continue with that analogy, you would buy something like a can of groceries for a customer as opposed to your own inventory, is that correct?

A Right.

Q Now, could you distinguish between those kind of sales either for your own account -- those kind of purchases, rather, for your own account or the account of your customer from what the function of Kelly, Andrews and Bradley was with respect to new issues or new cans of goods?

A Part of the business of a lot or many, I

would say the majority of over-the-counter brokers, is to engage in offering securities of new companies or trying to sell their stock to the public to raise capital, and this is called underwriting a particular company. And by that I mean that you offer the security for the first time to your customers or to other brokerage firms after they have filed a registration statement with the Securities and Exchange Commission and receive an okay from the commission enabling them to sell their stock to the public.

Q What you referred to as a new issue of stock, is that correct?

A That would be called a new issue, that is correct.

Q And that stock, prior to the time you sell it and before the time the Securities and Exchange Commission approves it for selling, that hasn't traded yet?

MR. BRILL: Your Honor, I am sorry to interrupt. It doesn't seem necessary for the prosecutor to repeat each answer in the next question.

THE COURT: It is just a mannerism. Let's not be captious.

MR. BRILL: I don't want to be. I think it

would save time if we avoid that.

A Could you please repeat the question?

THE COURT: Let me plunge in and ask you that: When a company wants to put out a new issue and it doesn't want to list or can't list it on an exchange, what does it do? Does it get an underwriter?

THE WITNESS: Yes, your Honor.

THE COURT: And an underwriter is somebody who undertakes for a commission or a fee to sell the securities to the public, is that correct?

THE WITNESS: That's correct.

THE COURT: But the underwriter himself doesn't know everybody and can't reach everybody in the market, so he uses materials in order to sell the new issue, is that right?

THE WITNESS: That's right.

THE COURT: In other words, he is like a wholesaler that is retained by the company that wants to sell the new issue and he gets his dealers, who are the retailers, who sell to the public, is that right?

THE WITNESS: That is correct. Generally it is a combination. He sells some to his customers and to other dealers.

THE COURT And to other dealers. But you

were in the position of a retailer, not the wholesaler?

THE WITNESS: Well, we used the combination.

THE COURT: We will get to this case. I will let the United States Attorney carry it forward from there.

MR. SAGOR: We are about to go into the fact itself, your Honor.

Q At this time, Mr. Schiffman, I would like to direct your attention to late August-early September, 1970, and ask you, sir, when was the first time that you heard, according to the date, about a new issue called Cadgie Taylor Company?

A Approximately the first week in September of 1970.

MR. MARCUS: Your Honor, may we have the dates fixed with a little more specificity, if it's possible?

THE COURT: If it's possible, why not?

Q Directing your attention to approximately the first week of September, what were the circumstances under which you heard about Cadgie Taylor Company?

A Fred Miller, who was one of the owners of Kelly, Andrews and Bradley, as I was, came to me and said that he had had a conversation with Arnold Widlitz, who

* * *

A He is wearing a gray suit.

MR. SAGOR: Your Honor, may the identification of Mr. Steel be noted for the record?

THE COURT: Yes.

Q Now, Mr. Schiffman, as best you can, would you tell us who said what during that conversation?

A Well, after Mr. --

MR. MARCUS: Before we begin, may we have a time fixed? It was sometime during the day in early September, the first week, but what time of day was this? Mr. Bassani was coming in and out of his office, so on and so forth.

Q Do you remember whether it was the morning or afternoon?

A As far as I remember, it was the morning.

Q Can you give the approximate hour, if you can only?

A Well, it would be after 10 o'clock.

Q Please proceed with the conversation.

A Mr. Feis and Mr. Steel came into an office that we had at that time, which was a little room with a desk, and myself, Mr. Scheer and Mr. Miller were in the room at the time. We exchanged introductions.

Q Who said what? Don't skip a thing. Tell

us what was said.

A I believe that Mr. Steel introduced himself to me and he introduced Mr. Feis, and I believe I introduced Mr. Fred Miller and Perry Scheer.

Mr. Steel had a copy of a prospectus of the Cadgie Taylor -- by a prospectus I mean the written information that is put in a booklet form which is approved by the Securities and Exchange Commission prior to a company being able to sell their securities to the public --

THE COURT: Let's pause there for a minute as long as you are explaining it.

Does the booklet say that the SEC approves the security or only the writing in the booklet?

A It only approves the fact that all of the necessary material has been supplied in accordance with the requirements. It doesn't approve the security, nor does it say that the information in the prospectus is true. It is just that the questions and the material that is necessary to be supplied have been supplied.

THE COURT: All right.

BY MR. SAGOR:

Q While we are on the subject, Mr. Schiffman, I show you what has been promarked Government's Exhibit 1

* * *

discussed Friday afternoon.

THE COURT: Yes. You had better come up to the bench.

(At the side bar)

THE COURT: What do you propose to develop here?

MR. SAGOR: Your Honor, there is a conversation that Mr. Steel was going to help the stock along during the offering itself. It was related to the after market, but it actually happened during the course of the conspiracy before November 30, 1970. It is part and parcel of Steel's role in this conspiracy to help the stock in the newspapers.

THE COURT: You mean after the 120 days?

MR. SAGOR: Even before, your Honor, and slightly after, so the market wouldn't fall out of the offering. Part of the deal was for KAB and Feis to get their customers out of the stock. That's one of the reasons they would even take it here, take the cash payment because they hoped that the bottom wouldn't fall out of the stock, and part of Steel's role was to insure the bottom wouldn't fall out by supporting the stock in the market.

MR. BRILL: There is no such charge in the

indictment, Judge.

THE COURT: I will allow that. It is all part of the same course of conduct.

MR. BRILL: I respectfully except.

MR. KLEIN: Atthis time we ask for the withdrawal.

THE COURT: Sure, you may ask, and it will be denied.

MR. BRILL: And that motion is one which inures to the benefit of all defendants?

THE COURT: Yes, that inures to the benefit of all defendants.

I've been thinking about it over the weekend. There are a number of cases which make it obvious to me that something which is this closely related certainly can get in, and this circuit has also held that in a conspiracy all you have to do is allege really the language of the statute, and I take it that a means can be amplified by a bill of particulars where the indictment says "Among other means." It seems quite clear to me that the recent case Salazar, if you want to look at it in the slip sheets, by Judge Lumbard, gives tremendous leeway to this situation.

But renew your objections on each piece, if

you want to, for the protection of your record.

MR. BRILL: Certainly.

(In open court.)

THE COURT: If I may make a suggestion, would you have the term, "after market" defined by the witness before he answers the question? First ask him what is an after market?

MR. SAGOR: Yes, your Honor.

BY MR. SAGOR:

Q Mr. Schiffman, would you describe for the members of the jury the meaning of after market?

A After market is a term used meaning that it is the trading -- it relates to the trading, the buying and the selling of the security when it starts to trade after all of the original shares in the new issue have been sold.

It is a term that talks about any activity, meaning any activity whatsoever after the issue has been sold to the public.

Q And that would mean activity by whom, Mr. Schiffman?

A By other brokers or retail customers of other brokers.

Q And what about any publicity?

MR. BRILL: I object to the leading and the suggestion.

THE COURT: Yes, let's leave that. I just wanted to get a definition.

The jury will understand that we have had this talk about this 120-day period. Whether it is 120 days or 190 days or 300 days doesn't make any difference.

There comes a time when all of it has been sold, although new issue. Then, of course, it gets traded like any other issue, and that they call the after market.

Q Now, Mr. Schiffman, would you tell us what, if anything, was said about the after market during this conversation between yourself and Mr. Feis and Mr. Steel?

A Mr. Scheer asked Mr. Feis if he had any after market buying lined up, and Mr. Feis said that he thought that he did. And Mr. Steel said that he had a brokerage firm by the name of Memme & Co. and that Memme & Co. was interested in trading the stock when it started to trade in the after market and that they would probably be retailing the stock and supporting the stock and making a market for the stock.

Q Mr. Steel also said that he would be able to achieve some sort of publicity for the company as he wrote a newspaper column which was a syndicated column in many newspapers throughout the country, I believe he said mainly in the west and midwest, and that he would publicize the company in his column and that should help stimulate the after market.

THE COURT: Let me pause for a minute.

You used the phrase "making a market."

What does that mean, making a market?

THE WITNESS: Making of a market is when a brokerage firm lists their name in the pink sheets as making a market or willing to buy or sell the particular security at a given price. The price is called the bid and the asked.

THE COURT: And the suggestion was, you say, that Memme & Co., M-e-m, is it, & Co?

THE WITNESS: I believe it is M-e-m-m-e. I could be wrong.

THE COURT: Whatever it is, they were willing or said they would be willing to be the after market, market makers as it were.

THE COURT: Yes.

THE COURT: Now, I'll have to lead you a little on this because I don't want to make a statement myself to the jury. But is it a fact that the market maker is a particular broker who lets out in the pink sheets that he is willing to buy or sell at certain bid and asked prices and, if committed, to take at least 100 shares of stock if he puts his name in the pink sheets; is that correct?

THE WITNESS: That is correct, take 100 shares and sell 100 shares.

THE COURT: Or sell 100 shares.

All right. Go ahead.

BY MR. SAGOR:

Q Now, did there come a time after this conversation with Mr. Steel and Mr. Feis in early September that you again saw Mr. Feis, Mr. Steel and Mr. Ridland?

A Yes, there did.

Q And as best you can, Mr. Schiffman, before telling us that conversation, when did this conversation occur between yourself, Feis, Steel and Ridland?

A Well, I would say that it was within a week of our meeting with Mr. Feis and Mr. Steel, probably less than six days, and I think it was certainly more than one day thereafter.

THE COURT: And who was present at this meeting?

A Myself, Mr. Steel, Mr. Feis, Mr. Ridland, Mr. Scheer, Mr. Miller, and Bassani was present too during times of this meeting.

THE COURT: Where did this take place?

THE WITNESS: This meeting took place again in the offices of Kelly, Anderson & Bradley.

THE COURT: Go ahead.

BY MR.SAGOR:

Q Mr. Schiffman, do you remember whether it occurred in the morning or in the afternoon?

A I'm not sure what time of day this meeting occurred.

Q Before telling us the conversation, can you identify for us Mr. Ridland, if he is present in the courtroom?

A Mr. Ridland is the gentleman sitting to the right -- Mr. Feis' right, and he is wearing a dark blue suit.

MR. SAGOR: Your Honor, may the identification of the defendant Ridland be noted for the record?

THE COURT: Yes.

Q As best you can now, Mr. Schiffman, would you tell us who said what during the ensuing conversation?

A Well, Mr. Ridland was introduced to all of us and --

Q As what? What did they say his name was?

A Carman Ridland and he was the president of Cadgie Taylor Company

Mr. Steel said to Mr. Ridland that these boys are willing to sell the security and that they have a good reputation and should be able to sell the stock and they want $40,000 if they sell 100,000 shares.

Mr. Ridland said, "That's a lot of money," something to that effect. And Mr. Scheer at that point said that "We would not do it for less than 20 per cent of the dollar amount that we sell."

Mr. Ridland said that it could be arranged and

that we would be able to receive $40,000 if we sell 100,000 shares.

At that point Mr. Scheer said that he would like to have at least some of the money given up front so that we would be assured that if we did sell the stock and we turned the proceeds over to Mr. Feis that we would get paid.

Mr. Ridland and Mr. Steel both said that that would be impossible because they weren't going to give us any money until the stock was sold.

And then Mr. Scheer said maybe they would be able to work out some arrangement whereby the money would be put up and held either jointly by Mr. Feis and somebody from our company or in some way or another that we, being Kelly, Andrews & Bradley, would be able to know that $40,000 was available if we sold the stock.

MR. KLEIN: Your Honor, may we inquire as to whether Mr. Bassani was in at this part of the conversation or not?

THE COURT: Was Mr. Bassani present, do you know?

THE WITNESS: I'm not sure if he was or he was not present during this part of the conversation, your Honor.

Q Please continue, Mr. Schiffman.

A Mr. Ridland talked about the company, told us

* * *

VOIR DIRE EXAMINATION

BY MR. KLEIN:

Q Do you have copies of any letters sent to these five people referred to in these slips that you are enclosing a prospectus or a confirmation?

MR. SAGOR: I object. No such letter is being offered.

MR. KLEIN: This is voir dire.

THE COURT: You may answer that.

A It was not our custom to send letters along with the confirmations.

Q Do you have any independent proof other than what you testified to as the custom of your company that these five people were actually mailed the originals of these particular papers?

A Well, I think the records of the company would show that those individuals paid for their stock. Therefore, they received the confirmation.

MR. KLEIN: I ask that that be stricken as not responsive.

THE COURT: No. It is quite responsive. How else do you prove what you are asking?

MR. KLEIN: I am just asking if there is any way of proving that the people got their --

MR. SAGOR: They sent material in pursuant to receiving something in the mail, Mr. Klein.

THE COURT: Let's go into it for a minute.

BY THE COURT:

Q When somebody buys stock from your firm or through your firm, do you confirm the sale in writing normally?

A Yes.

Q And is that by a confirmation slip?

A That's correct.

Q And is that by this kind of slip that is offered in evidence here as 2, 3, 4, 5 and 6?

A Yes, your Honor.

Q And are those uniformly mailed out in the U. S. mails to the customer?

A They are.

THE COURT: I'll allow it. I'll receive it in evidence.

MR. BRILL: Could I ask Mr. Sagor a question?

THE COURT: Surely.

MR. BRILL: Privately.

(Pause.)

MR. BRILL: Could I bring your Honor's attention to --

THE COURT: Do you want to come up here, Mr. Brill?

* * *

(In open court)

BY MR. SAGOR:

Q Mr. Schiffman, how much did customers pay for a share of Cadgie Taylor stock?

A $2.

Q Per share?

A Per share.

THE COURT: Is that including the commission?

THE WITNESS: That's including the commission, your Honor.

Q Mr. Schiffman, can you tell the members of the jury whether youthought theCadgie Taylor stock in October of 1970 was worth $2 or anything near $2?

MR. BRILL: That's objected to, if your Honor please.

THE COURT: Overruled.

A I did not think it was worth anywhere near $2 per share.

Q What did you think it was worth, if anything?

MR. BRILL: That is objected to. That is not an issue in this case, Judge.

THE COURT: Overruled.

A Well, the company in my estimation was bankrupt.

MR. BRILL: I move to strike that answer, if your Honor please.

THE COURT: Overruled. Motion denied.

MR.BRILL: May I come to the side bar and have a motion, your Honor.

THE COURT: Yes, all right.

(At the side bar)

THE COURT: Yes, Mr. Brill?

MR. BRILL: Your Honor, I respectfully move for the withdrawal of a juror and the declaration of a mistrial on the ground that I believe that the reception of this testimony is so prejudicial, so unduly prejudicial, that it far outweighs the probative value, if any, that might be attributed to it.

THE COURT: Do you want to consent to a mistrial?

MR. SAGOR: No, your Honor. I said in opening that this was a worthless stock case. Counsel would do well to read United States v. Brown and other cases, where the Court of Appeals has said that it is irrelevant to receive payment in connection with stock, and oftentimes they have so indicated, particularly where the stock is worthless.

THE COURT: I'll give you the analogy on

which I depend, so you have an exception in case of a conviction: This is the same, as I see it, as if a man were offered money to hit somebody on the head. I think to then be allowed to ask him, "Do you think it would hurt him if you hit him on the head?" would be the same thing.

Anyhow, that is my view.

(In open court)

MR. KLEIN: Your Honor, may that motion be on behalf of all defendants?

THE COURT: Yes.

But I want to ask a question.

BY THE COURT:

Q When you say the company was bankrupt, I take it you don't mean that they were actually in bankruptcy; you mean they were insolvent; is that what you mean?

A Yes, your Honor.

Q What do you mean by "insolvent"?

A Well, in this particular case their liabilities greatly exceeded their assets.

THE COURT: Does the jury understand that?

Liabilities, generally speaking, with some exceptions, is what you owe, and your assets, on the other side, are what you have. And if your liabilities,

generally speaking, are bigger than your assets, then you are insolvent, or some people say behind the eight ball. There are a lot of expressions for that. But that's what I think he means.

Whether that is so or not you can look at the prospectus itself, Exhibit 1, when it gets to you, and you can evaluate it yourselves.

And I am cautioning you now that the statements which Mr. Schiffman is making I am permitting in to show his intention in connection with this matter and not as binding testimony on the jury in any sense. You understand that. It is up to you to make your own determination.

MR. SAGOR: Your Honor, there is a pending question.

Q Mr. Schiffman, how much, if anything, did you think this stock was worth?

MR. KLEIN: Didn't we object to that, your Honor?

THE COURT: You objected to that and I overruled it.

A I didn't think it was worth very much.

THE COURT: All right. That's enough on that line.

MR. BRILL: Can I, your Honor, move to strike that answer on the ground that it is absolutely meaningless.

THE COURT: I'll allow it to be stricken.

MR. BRILL: Thank you.

THE COURT: Disregard that. But all the rest of these questions stand.

Go ahead.

BY MR. SAGOR:

Q Now directing your attention to October and November of 1970, did you on occasion see Mr. Feis and Mr. Steel at Kelly, Andrews & Bradley?

A Yes, I did.

Q And can you place with any certainty the dates upon which these people appeared?

MR. BRILL: Your Honor, I object to lumping people together. I think he should identify eachof them.

THE COURT: You are quite right. There is no doubt about that.

Q Did you see on occasion Mr. Feis and Mr. Steel together?

A Yes.

Q And did you see on occasion Mr. Feis separately?

* * *

MR. SAGOR: Your Honor, I would like to refer to this document again but at this point I would like Mr. Schiffman to look in the bottom right-hand corner of the document.

THE COURT: Before that, are you going to ask anybody what OTC means?

MR. SAGOR: I thought I would do that, too, your Honor.

Q Mr. Schiffman, before going to the bottom right-hand corner, would you tell the members of the jury what OTC is?

A Over-the-counter.

Q And is that where the Cadgie Taylor stock was traded?

A At this time it wasn't traded at all.

Q It wasn't yet traded but in the future it would be traded over-the-counter?

MR. BRILL: Objected to, if your Honor please.

THE COURT: It would be traded OTC. You don't argue about that.

MR. BRILL: In the future.

THE COURT: After the article, not before. He is just fixing a date, isn't he?

MR. KLEIN: I think that the article doesn't set forth any date whether the stock has been trading before or

* * *

A No.

THE COURT: Just to clarify something. The use of the word "tombstone" has nothing to do with debt or anything like that or that it is a bad stock or a good stock. The reason I think the name came up colloquially is because a tombstone generally has a very limited inscription, here lies so and so and a date and no big stuff about it. The same is true here. The people are supposed to buy from the prospectus, but in order to call their attention to the prospectus you can put in an ad which doesn't have much more on it than could be contained on a tombstone. That's what it means. I want you to understand that.

MR. SAGOR: Your Honor, just one more thing with respect to Government's Exhibit 16.

Q I direct your attention, Mr. Schiffman, to the upper left-hand corner of the tombstone.

Do you see that?

A Yes.

Q And do you see a red mark there?

A Yes.

Q Can you tell us whether or not that red mark was on Government's Exhibit 16 at the time that you received it?

A I believe it was, yes.

* * *

THE COURT: Yes.

MR. SAGOR: Members of the jury, Exhibit 17 in evidence is a page from the New York Times dated Monday, October 26, 1970, and on the bottom right of the page is another tombstone, and it reads:

"All these securities having been sold, this advertisement appears as a matter of record only," and it is dated within the tombstone box October 2, 1970. On the upper left it says "New Issue," and in the middle it reads, "125,000 shares Caddie Taylor Company common stock, par value 2 cents per share" --

THE COURT: Two cents?

MR. SAGOR: Yes, your Honor, two cents.

-- "Copies of a prospectus may be obtained from the undersigned only in states where these securities may be legally offered," and in the bottom of the tombstone, "Feis Securities Company, 111 John Street, New York, N. Y., 10038, telephone No. 212 732 2910."

THE COURT: There I should perhaps enlighten the jury that where it says par value 2 cents, that doesn't mean anything in this case at all. That is merely an accounting term as far as the books are concerned. But you can have a two cent par stock that is worth $2.00, and

in many cases nobody would argue about that. I just don't want you to be confused, to think that they were selling a two cent stock for $2.00.

All right. Go ahead.

MR. SAGOR: Could you, conversely, charge the jury that you could have a par value stock of two cents and a stock selling for $2.00 is worth less than two cents, for example?

THE COURT: Oh, yes. One has nothing to do with the other. In other words, the actual value has nothing to do with the par value. That is just a bookkeeping entry as to how they put it down.

All right.

BY MR. SAGOR:

Q Did there come a time during October 1970, Mr. Schiffman, that you transferred funds that you received for the Caddie Taylor stock to Mr. Feis?

A Yes, sir.

Q And how much in October did you transfer to Mr. Feis?

A I'm not sure of the amounts at this time. Possibly about --

MR. BRILL: I object to the possibilities, Judge.

* * *

A Poland told me he had $40,000. Scheer told me that he had gotten this money from Bob Feis. Poland gave me the $40,000. I gave Scheer approximately $1500. The balance of the money I gave back to Poland. I told him to deposit $10,000 in the Kelly --

THE COURT: Pause there for a minute. You say you took off $1500 from $40,000. That left $38,500, is that correct?

THE WITNESS: That's right.

THE COURT: Is that what you gave him back, 38-5?

THE WITNESS: That's right.

THE COURT: What did you tell him to do with the 38,500?

THE WITNESS: I told him to take 10,000 of that and deposit it in the Kelly, Andrews and Bradley checking account.

THE COURT: That would leave you with 28,500?

THE WITNESS: Right.

THE COURT: What did you tell him to do with the 28,500.

THE WITNESS: Put it in the Kelly, Andrews and Bradley safe deposit box.

Q Do you know what bank, by the way?

A There were two. He put it in the Chemical.

MR. BRILL: I object and move to strike.

THE COURT: Yes.

Q Did there come a time on November 6, 1970, that

* * *

about, don't you?

A That he is about to ask me about?

Q Yes.

A Or the one he did ask me?

Q Well, either.

MR. SAGOR: I am going to object to that. What is the relevance of what Mr. Schiffman --

MR. BRILL: I want to find out what he knows about its being entered in this document.

THE COURT: I don't think it affects his ability. You can cross-examine him later on anything you want to when you have your cross-examination.

MR. BRILL: All right, sir.

THE COURT: The preliminary examination is merely on authentication.

I just want to say to thejury that, generally speaking in the federal court, books of record, like books that the bookkeeper keeps, are generally admitted when they are kept in the ordinary course of business and when they reflect contemporary entries that are made as they occur. The obvious reason is that otherwise you would have to call every bookkeeper, and sometimes in a big firm you might have five bookkeepers. One works on the cash receipts book, one works on the general ledger, one

works on something else, and so on.

So, unless you show that there is something phony or wrong about the particular book or entry, normally it is admitted. So that it is unnecessary in this case for Mr. Schiffman to know every entry that is made in the book. That is not relevant, obviously. He wouldn't know every entry.

So I have ruled that the book is admissible. I will rule that now on the basis which I indicated to you.

Anybody is still free to attack the truth of anything written in it, but it is admissible in evidence.

MR. SAC[illegible]: Your Honor, at this time, only Exhibit 21 for identification is offered.

THE COURT: That is received in evidence.

MR. KLEIN: Same objection.

(Government's Exhibit 21 for identification was received in evidence)

MR. KLEIN: Your Honor, may we approach the side bar?

THE COURT: Yes.

(At the side bar)

THE COURT: What is it, Mr. Klein?

MR. KLEIN: I want to object to the admissibility

of this document and the testimony concerning the $10,000 which is being concealed in the form of officers' loans as a device. I say that is beyond the scope of the conspiracy. What Kelly, Andrews did with the money is no concern of the defendnats in the case. It is no part of the indictment that they concealed the cash payment. They are charged with paying it, not receiving it.

THE COURT: The purpose of it is to prove the conspiracy itself, which is allegedly to have paid a commission beyond what was revealed in the prospectus in order to induce certain action, and also to deliverately omit it from the prospectus. Therefore the government, I should think, would have r right to show how it was handled.

MR. KLEIN: If that was part of the ---

THE COURT: In other words, if I say to you, "I am going to give you some cash under the table. Make sure that nobody picks this up," then anything you do that hides it is part of my instructions, it seems to me. That is the whole idea of it.

MR. KLEIN: Only if the indictment charges concealment as part of the crime.

THE COURT: No. I think you are confusing it with those cases which deal with concealment after the

conspiracy is ended as such, and that is different. That is different.

I'll allow it. But you have your record.

MR. KLEIN: Yes, sir.

MR. BRILL: It seems to me that this is an internal transaction as distinguished from what is involved in the conspiracy, and therefore it could not be binding upon the defendants.

THE COURT: Well, you have an argument, of course. But the way I view it is that if somebody says, "I will give you cash," in circumstances which indicate that you are not to tell anybody about it, then the method by which you conceal it is equivalent to following an instruction.

The other defendants may not have said "Do it this way, by officers' loans." They may have said, "Do it by putting it in a bank."

MR. BRILL: Or they may not have said anything.

THE COURT: That has to be seen.

MR. BRILL: This generates the impression that they authorized it.

THE COURT: But there is already testimony that they would give them the money under the table. I

only use that expression.

MR. BRILL: I understand. It is kind of a generic term.

THE COURT: That was the conversation he testified he had with Feis and with Steel.

MR. KLEIN: The consideration was to sell the stock. Once they got the money, the conspiracy is over, your Honor. What they did with it -- they could have gone to the races and lost it. What they did with it --

THE COURT: YOu still don't understand.

MR. BRILL: I think I have your Honor's point, and I would just like to pursue it for one moment.

I think that your Honor's point carried to its ultimate conclusion is terminated with Exhibit 20, which shows the deposit of the $10,000 in the bank. What follows that is an internal thing without Feis, without, anybody else.

THE COURT: It is possible. But that's the way I view it, Mr. Brill.

MR. BRILL: All right.

jgrf am 3b 1 Schiffman - direct

(In open court.)

BY MR. SAGOR:

Q Mr. Schiffman, you have before you Government's Exhibit 21 in evidence, the officer's loan, the sheet from that ledger statement, is that correct?

A Correct.

Q Would you take in your hands a green grease pencil and circle the $10,000 item? Circle the whole thing.

A (Marking.)

Q And what date is that item reflected on the books of Kelly, Andrews & Bradley?

A November 6th.

Q And how is it reflected?

A As an officer's loan in the amount of $10,000 from Fred Miller.

MR. SAGOR: Your Honor, may we show this to the jury?

THE COURT: I don't think they will understand a bit of it right now. I am not trying the case, but you had better explain it a little more.

Q Can you elaborate, Mr. Schiffman?

A This indicates --

THE COURT: Start with a simple thing.

BY THE COURT:

Q In the normal course of business, if you got $10,000 deposited in the Chelsea Bank, how would it appear on the general ledger of your company?

A Well, it could appear in many ways. It would be --

Q In many ways or one way?

A On the general ledger? Depending on what it is for. It would be ordinary income or ordinary receipt of payment for some stock.

Q Well, let's go back to the cash receipts book. How would it show on the cash receipts book?

A As a deposit in payment for something.

Q Not in payment. Receipt.

A Receipt of something.

THE COURT: Have you got the cash book here?

MR. SAGOR: We do. We could find that entry and we could put it in. We do have it here. We could put in that too.

THE COURT: I think you should.

MR. SAGOR: Okay.

BY THE COURT:

Q Before we do that, if you put it in the cash book as $10,000 received by way of a bank deposit, then when it gets to the general ledger, if you were doing it:

normally, what would it then show in the general ledger, in this transaction?

A The source of the receipt.

O What would it say?

A In this particular transaction? It would show that it was a loan from an officer.

O No, it wouldn't.

A Well, I'm not sure, then, your Honor. I'm not sure I know.

O Assuming that this was an open transaction, how would it show in the general ledger? You know who you got the money from, don't you?

A Oh, I see. As money received from Robert Feis -- from Feis Securities as commission.

O No. As a matter of fact, the same transaction appears, according to your testimony -- I wasn't there and I don't know whether it ever occurred. But assuming your testimony is true that that money did come from Robert Feis, how is it reflected in the general ledger, so the jury understands it?

A Well, the true source of the income in this particular case was commission income. This was an additional commission income that was paid for a service performed by Kelly, Andrews & Bradley.

O But that is not how it is reflected, is it?

A No. It is reflected under the officers' loans.

O All right. What does that officers' loan mean? What does it purport to be, that $10,000?

A A loan from Fred Miller to the corporation.

O A loan from Fred Miller or a repayment of a loan by Fred Miller? Which is it?

A No. It is loan from Fred Miller.

O From Fred Miller. And you owe Fred Miller $10,000 --

A Correct.

O According to the books?

A Yes.

THE COURT: All right.

BY MR. SAGOR:

Q I show you what has been marked 21-B for identification.

Can you identify 21-B for identification?

A Yes.

O And is that from the Exhibit 18 for identification?

A Yes.

O And is that made in the ordinary course of your business?

A That is correct.

O And was it the ordinary course of your business to make such journal entries?

* * *

MR. SAGOR: 21-B is offered.

THE COURT: Let me see, too.

MR. BRILL: Would your Honor like to see it first?

THE COURT: Yes.

(Government's Exhibit 21-B handed to the Court.)

MR. KLEIN: Objection, your Honor.

THE COURT: Overruled.

(Government's Exhibit 21-B received in evidence.)

MR. SAGOR: Your Honor, as we did with 20, may the record note that 21-B reflects a deposit and that the deposit is in cash as opposed to a check. It is a deposit of $12,000 on November 24, 1970.

MR. BRILL: I don't think it says as opposed to a check. It just says cash.

THE COURT: It says cash, not the line check. Just do it the way it is. It is on the line check to cash and not on the line next to check.

MR. SAGOR: Yes, your Honor. There is nothing on the line next to checks.

Q I show you what has previously been marked Government's Exhibit 21-C. Do you have 21-C before you, Mr. Schiffman?

* * *

or a copy. It is addressed to Kelly, Andrews and Bradley, my attention.

MR. SAGOR: 23 for identification is offered.

(Pause)

MR. KLEIN: May we have a voir dire, your Honor?

THE COURT: Yes.

MR. KLEIN: I didn't hear your Honor's ruling.

THE COURT I said yes.

VOIR DIRE EXAMINATION

BY MR. KLEIN:

Q Sir, did you personally receive this telegram?

THE COURT: Did you personally what?

Q Did you personally receive this telegram?

A You mean did the messenger deliver it to me?

Q That's right.

A Probably not.

Q Did someone in your company show it to you or did you see it on a desk?

A It was given to me from the back office, where it was delivered.

MR KLEIN: I ask that the second portion be stricken, the last words be stricken out, "Where it was delivered."

THE COURT: Denied.

Q Did you see it delivered?

A Not that I recall.

Q Do you know who gave it to you?

A No.

Q Do you know how long after it was allegedly delivered that you received it?

A Probably immediately.

Q Do you know for sure?

A No.

Q Do you know if you were in the office when it was delivered?

A I don't know exactly when it was delivered, so I don't know.

Q Is this the same condition it was in when it was delivered?

A I would imagine it is.

Q Well, do you know or not?

A Can I see it again?

Q Surely.

MR. SAGOR: Your Honor, could it reflect that the plastic binder was put on by the government?

MR. KLEIN: Exclusive of the plastic bindre. I'm talking about the telegram, your Honor.

(Exhibit handed to witness)

A I think it is.

Q I invite your attention to the fact that there appear to be four staples in the telegram on the first page and there is another page attached to it. Do you see that?

A Yes.

Q And there is another page attached to it underneath.

A Yes.

Q Do you see that?

A Yes.

Q And you say that is the way it was delivered?

A If you are talking about the staples, I don't know.

Q How about the second page that is in back of it?

A It looks like it is all part of one page. I don't know if it's the second page underneath it.

MR. SAGOR: I put the staples in.

MR. BRILL: Oh, come, come, come. Please, your Honor. I object to that statement and ask your Honor to instruct the jury to disregard it.

THE COURT: I will not do so. It is a

perfectly correct statement.

MR. KLEIN: I am going to object to its admission on the grounds that an improper foundation has been laid and that this is not the best proof, the best evidence of whether such a telegram was actually sent from Western Union or whether a blank was typed.

THE COURT: Generally were you getting the telegrams at this office you conducted, this brokerage house?

THE WITNESS: We got a few, most of them dealing with whether or not a new issue was released or not.

THE COURT: I understand that. But it would come into a certain place and then be distributed, is that what happened?

THE WITNESS: Yes.

THE COURT: And did this telegram come toyou in the same way as all other telegrams come to you?

THE WITNESS: As far as I recall, it did.

THE COURT: As far as you recall? All right.

Objection overruled.

MR. SAGOR: Your Honor, I am taking the plastic away and I invite the jury's attention to look at

* * *

Q Over the luncheon break has that now been marked 26-A for identification?

A Yes, it has.

MR. SAGOR: Your Honor, may 26-A for identification be extracted from Government's Exhibit 26?

THE COURT: Yes.

Q Mr. Schiffman, could you, without ripping the page, extract it?

THE COURT: Why don't you just let him testify and then pull them all out?

MR. SAGOR: I thought there might be objection.

MR. BRILL: No.

Q Mr. Schiffman, directing your attention to 26-A for identification, was that made by Kelly, Andrews & Bradley in the ordinary course of its business?

A Yes.

Q And was it the ordinary course of its business to make such an entry?

A It was.

Q In connection with the sale to First New York Equities of Cadgie Taylor, when did you first receive money from First New York Equities?

A October 22nd.

Q And how much money did you receive from First New YorkEquities?

A $40,000.

Q And after the $40,000 was received, what was done with the $40,000.

MR. BRILL: May we have the date of the receipt, please?

MR. SAGOR: Yes. October 22nd.

A Well, it was deposited in the Kelly, Andrews & Bradley checking account and eventually turned over to Mr. Feis in payment for the stock.

Q How much before October 22, 1972, did the sale to First New York Equities take place?

A Approximately seven days.

Q And how can you tell that?

A Well, the billing went out and paid within seven days of when it was billed.

Q Was that a practice at Kelly, Andrews & Bradley?

MR. BRILL: I will object to the practice unless he knows. He is now talking about a specific transaction. I think we should have the specific details concerning it.

THE COURT: The point is that a brokerage house generally, for example, expects paymentof the shares it sold within five days. That is a rule of the Exchange.

So if you ask a broker, did you send Mr. Brill 100 shares five days after or did you get a check five days

after, the broker could honestly say he doesn't know but he knows his practice is that is what happened. That is all he is asking him.

MR. BRILL: We don't have that kind of situation here, Judge. Thatis why I am anxious to get the specifics.

THE COURT: If he knows the specifics,it certainly would be better.

Q Mr. Schiffman, did you hear what his Honor just said?

A Yes.

Q Is what his Honor said in every respect correct?

MR. BRILL: I object.

MR. SAGOR: Mr. Brill made a statement. I want the statement stricken or Mr. Schiffman to testify.

THE COURT: He doesn't have to do that.

Can you tell of your own knowledge when the money came in from First New York Equities?

THE WITNESS: I can tell when it came in because it is dated in the ledger.

THE COURT: Can you testify when the confirmation slip was sent to First New York Equities?

THE WITNESS: No, not the exact date, your Honor, no.

THE COURT: I don't think it is consequential, the

whole thing.

MR. SAGOR: We would like to press it, if your Honor please.

THE COURT: I won't allow any testimony concerning when the First New York Equities money came in, but I will allow him to state the practice generally.

* * *

though. It is what he says the record supports.

MR. KLEIN: It doesn't appear to be an independent recollection, your Honor.

THE COURT: He says it is. It is his recollection of the custom and he doesn't know anything that made anybody deviate from the custom.

MR. SAGOR: One last question.

THE COURT: It still is his word. He doesn't have any piece of paper to show the 15th. Mr. Brill is right about that. On the other hand, the jury will recall that he has already testified that the date of October 2nd was a phony date that they put in in order to backdate it. So obviously it is not going to be found in the books and records. That doesn't necessarily mean that he is telling the truth or he is not telling the truth. It will be up to the jury to determine.

MR. SAGOR: One last moment with Mr. Eisenstein.

Q On Government's Exhibit 26C for identification was there a purchase by Mrs. Eisenstein on October 22, 1970?

A There is a payment on October 22.

MR. BRILL: He is not testifying about his

recollection now. He is testifying about something in a book. That is what I object to.

THE COURT: Do you want me to repeat what I just said?

MR. BRILL: No.

Q Did she purchase other stock on or about the 20th?

A She purchased other stock on the 20th, yes.

Q When did you receive payment from Mrs. Eisenstein for this other stock she purchased on or about the 20th?

A On the 22nd.

MR. SAGOR: At this time, your Honor, the government offers 26A for identification and 26C for identification, the ledger sheets for Mrs. Eisenstein and First New York Equities.

THE WITNESS: I don't know how to open the book.

MR. SAGOR: Mr. Hughes, if we have it here, we can help.

THE COURT: 26 what?

MR. SAGOR: 26A and 26C.

THE COURT: 26A is First New York Equities?

MR. SAGOR: Yes, your Honor.

THE COURT: This book only shows the date the payment was received from the customer, is that right?

MR. SAGOR: Yes, your Honor. I am sorry.

THE COURT: It does not show the date when the confirmation slip was sent out, is that right?

THE WITNESS: It shows a date which is not a true date.

THE COURT: It shows a date which is not the true date but it doesn't show the date when it actually was sent out according to your statement.

THE WITNESS: That's right.

THE COURT: What are you going to gain from it?

MR. SAGOR: Just showing, your Honor, the sale was close on the heels of the receipt from the customer, that a sale didn't take place on October 2 and the customer paid October 29th. We think that is probative.

MR. BRILL: I object to that statement.

MR. SAGOR: The Court asked a question.

THE COURT: I will allow it.

MR. BRILL: May we see that,please?

THE COURT: Sure.

* * *

MR. BRILL: Could we have the book on that, please, the general ledger, capital accounts?

Is this the general ledger?

MR. SAGOR: It is in your possession, Mr. Brill.

MR. BRILL: I don't have the general ledger. Is this the general ledger?

MR. SAGOR: No.

THE COURT: While we are pausing here, so the jury can understand, you look for the book, so we don't waste time, when you speak of capital, it means money which people put into the company which is this contribution to the company, and they own the subject to creditors that they owe money to, either who lend them money or do business with them and so on.

Then there are also creditors who make loans to the company. They don't own the company, but they lend money to the company or they sell them something and take a note for it, and those people are called creditors.

Now, then Mr. Brill mentioned, or rather Mr. Schiffman mentioned something called a subordinated loan, and that's not as complicated as it sounds. It simply means that somebody who makes a subordinated loan is willing that other creditors should be paid first and in case there isn't enough money left he gets stucl.

If there is enough money left, he will get paid eventually. And that is what he called a subordinated loan. He subordinates his own interest to the interest of other people, other people who lent them money.

So that when a brokerage house -- this is quite common, I take it -- has a capital account, it is either put in as capital or, in order to protect anybody who deals with them as a creditor, it is frequently put in as a subordinated loan, which means everybody gets their money back before the person who puts the subordinated loan in.

Now you go ahead.

* * *

He stated it was true.

THE COURT: I'll leave that to the jury.

As I understand it -- see if I understand you, Mr. Witness -- during September, when they were first selling the stock, Miller was supposed to do the selling and you kind of stood by, is that right?

THE WITNESS: That is correct.

THE COURT: Then in October, when it got hot, you really started to sell the stock yourself with the others, is that correct?

THE WITNESS: That's correct. They had much more to do with the sale. They had more customers. I wasn't particularly a retailer. I didn't really sell stock that much. But they did.

THE COURT: Is this a good stopping place, Mr. Brill?

MR. BRILL: Yes, sir, it is.

THE COURT: All right, ladies and gentlemen of the jury, we are going to recess now until tomorrow morning at ten o'clock promptly, and, as I said before, don't discuss thecase and don't let anyone discuss it with you and don't form any final opinion as to the guilt or innocence of the defendants until the matter is finally submitted to you.

* * *

A Well, I would say it was Kelly, Andrews and Bradley's income.

Q It wasn't Mr. Miller's?

A No.

MR. SAGOR: Your Honor, excuse me.

Q And whose income was the $12,000?

MR. SAGOR: Could your Honor explain to the jury that the corporation is taxed separately from an individual, just that fact alone?

THE COURT: Yes. I thought he answered the corporation.

Actually inthe tax law this money is received by a corporation, normally it is a business corporation, the stockholders of the company don't have to pay income tax on that, the corporation pays income tax. And generally what is left after the corporation pays the income tax is sometime s given out in what is called a dividend.

Now, when the stockholder gets the dividend, then he pays income tax on the dividend. Otherwise, in every business corporation, every day they sell goods; in General Motors, every time they sell a car, somebody who owns stock in General Motors doesn't have to pay an income tax. Thatis obvious. It is only at the end, when they divvy it up a little bit, and the individual

stockholder gets the money, then they pay income tax.

Here there is some question, which I am not going to go into now, as to whether the money, if money was paid, and that is for you to decide, went to the corporation, that is, the stock brokerage firm of Kelly, Andrews and Bradley or whether it was intended to go directly to the individuals concerned, namely Mr. Schiffman, Mr. Miller and Mr. Bassani and Mr. Scheer.

All right. That's enough on that.

MR. BRILL: In view of your Honor's statement, which I must regard as a ruling, I am somewhat limited. Could I come to the side bar? There is something that troubles me about your Honor's statement.

THE COURT: Sure.

(At the side bar)

MR. BRILL: What bothers me is that in your Honor's definition of tax liability your Honor did not indicate that this being a closed corporation, the income could and might very well be attributed by the internal revenue service as constructive dividend and taxable.

THE COURT: No. Only if it's a sub-chapter S.

MR. BRILL: It may not be distributed

income. It may be undistributed.

THE COURT: Oh, that is such a complicated thing.

MR. BRILL: That is the point. And that is what bothers me about it.

THE COURT: No, no, no. It would have to be in excess of capital requirements and all the rest. The old 102? Is that what you are talking about?

MR. BRILL: Yes.

THE COURT: That has nothing to do with this case. I am not going to confuse the jury about that.

I thought you were going to say that in the nature of things a bribe certainly can't go to the corporation, it has to go to the individuals, and that is a point you may want to make. And also I'll take a request to charge on that subject. But all I did was to give them a general picture. But this is a good valid point you might have there. I don't know. See what I mean?

MR. BRILL: Yes, sir.

(In open court)

MR. KLEIN: May I proceed, your Honor?

THE COURT: Yes, please.

BY MR. KLEIN:

Q Do you know what a 1244 corporation is?

A I don't think so. I might if you explained it.

Q Do you know what a personal holding corporation is?

A You mean one individual sets up a corporation?

THE COURT: Now, look, a stockbrokerage house is not a personal holding company. So let's forget about it. You are just confusing the issue.

Q How would you treat an actual loan by either you, Mr. Miller or Mr. Scheer to KAB on the books?

A The same way that these entries were made, as a loan from the particular individual to the corproation.

Q Thank you.

Now, you testified, I believe, that you back-dated certain items?

A Correct.

Q What items did you backdate?

A Confirmation tickets on the sale of Cadgie Taylor.

Q Anything else that you backdated?

A Well, by the very nature of backdating the confirmation, the general ledger and the customers' account

* * *

MR. MARCUS: I would like them introduced into evidence.

MR. SAGOR: May I see them?

MR. MARCUS: Of course.

MR. SAGOR: What page?

MR. MARCUS: Page 56, second section.

MR. SAGOR: Which tombstone?

MR. MARCUS: Both. The whole page is introduced, page 56.

MR. SAGOR: Sure, no objection.

(Defendant Feis Exhibit E was received in evidence)

Q Mr. Schiffman, when was this alleged payoff actually consummated?

A On I believe it was November 5, 1970.

Q And on that date, Kelly, Andrews and Bradley received this alleged $40,000?

A That's the day that I saw it, yes.

Q Do you know who brought the money over?

A I believe Scheer picked it up.

Q The question I asked you was who brought it over.

MR. SAGOR: Excuse me, your Honor, over to where, Feis Securities, Kelly, Andrews and Bradley?

MR. MARCUS: To Kelly, Andrews and Bradley.

MR. SAGOR: From where?

THE COURT: He answered the best he knows. He said Scheer picked it up. You can ask him where he picked it up, if he knows.

Q Who brought the money to Kelly, Andrews and Bradley?

A As I said, the best I can remember is Perry Scheer.

Q Were you there at the time the money was delivered there?

A No.

Q So you don't know for a fact who brought the money over?

A Well, as far as I can recall, I remember a conversation in which I got the understanding that Scheer brought it over.

Q And the first time you saw it was when on November 5th?

A In the afternoon, after I had returned from lunch.

Q When with regard to the closing was this cash delivered?

MR. SAGOR: I object, your Honor.

THE COURT: I didn't hear you.

MR. MARCUS: When with regard to the closing of the deal, the closing of the issue, was this money brought over --

THE COURT: We haven't heard anything yet about a closing.

MR. SAGOR: That is my objection.

THE COURT: Normally, ladies and gentlemen, a closing is a legal word of art that refers to, for example -- I think you will best understand it if you buy a house, for example, there comes a time when you pay the money over and you sign a mortgage and so on. That's called a closing. It's a closing of the transaction is what it really means. In these underwritings sometimes it is complicated and you have a big closing in which money is paid over and the stock is turned over or papers are signed and all sorts of things, but there has been no testimony here about any normal closing.

The testimony simply is that a check for the proceeds was paid over by Kelly, Andrews and Bradley to Feis Securities, theunderwriter.

MR. SAGOR: One modification. Four checks.

THE COURT: Four checks, but the same thing, the proceeds.

MR. MARCUS: May I have Exhibits 12, 13, 14 and 15 in evidence? Government's Exhibits.

May I approach the witness, your Honor?

THE COURT: Yes.

MR. MARCUS: Thank you.

Q These four checks are the four checks that you have stated were delivered by Kelly, Andrews and Bradley to Feis Securities, is that correct, sir?

A Correct.

Q And then as his Honor just stated the delivery of the money was at the time of the closing?

A Not that I know of at all. I don't know when there was an official closing here. I don't know when it actually took place, the closing, when the stock was delivered.

MR. SAGOR: Could your Honor explain to the jury that a closing takes place between the company Cadgie Taylor and the underwriter Feis Securities whereby Feis Securities turns over to the company the money as opposed --

MR. KLEIN: I will object to this. The prosecutor is not testifying. The proof is supposed to come from the witness' mouth on the stand.

THE COURT: He is asking me to explain a

legal situation.

MR. KLEIN: Then he should ask at the side bar. I disagree with the explanation.

Q Isn't it a common practice for the participating firm such as this to be at the closing where they receive the money?

A When who receives the money?

Q You sent this money over after you had completed your sales, is that correct?

A Sure, not before. After all the money was in.

THE COURT: I dind't hear that.

Q Kelly, Andrews and Bradley sent the money to Feis after they had completed their sales of stock, correct?

A Correct.

Q So, therefore, there could not be a closing between Feis and Carrie Taylor until that money was delivered, is that correct?

A In this situation, yes, I would say that is correct. It could have been, but it would not be normal.

Q But as far as you know, to the best of your knowledge, that didn't take place?

THE COURT: What didn't take place?

MR. MARCUS: This aberration -- withdrawn.

Q To the best of your knowledge, Mr. Schiffman, was this money delivered prior to any closing between Cadgie Taylor and Feis?

MR. SAGOR: Your Honor, just as to form, what money are we talking about, the payoff money, the proceeds?

MR. MARCUS: Objection. I am talking about the exhibits before the witness.

THE COURT: Read back the question, Mr. Reporter, please.

(Question read)

MR. MARCUS: And I take exception to the remarks made by the prosecutor.

THE COURT: Don't let's argue now, Mr. Marcus.

MR. SAGOR: What money?

THE COURT: Can you answer the question?

MR. MARCUS: These four checks.

MR. SAGOR: No objection if that is the question.

THE COURT: Can you answer it?

THE WITNESS: I have lost track of the question.

THE COURT: Let me put it to you. If I am

hurting you, tell me and I will stop.

The question is do you know if there was a formal closing between Feis Securities and the Cadgie Taylor Securities in which Feis Securities turned over the proceeds of the underwriting?

THE WITNESS: I don't know when there was a formal closing, if there was one, your Honor.

THE COURT: Then I will sustain the objection by the government. If he doesn't know, he doesn't know what came first.

MR. SAGER: I have no objection to Mr. Marcus' question as long as it is clear what proceeds he was referring to. I just didn't understand the question. I have no objection to the question, your Honor.

THE COURT: What is the question?

(Question read)

THE COURT: That's what I thought the question was. He doesn't know if it was before or after if he doesn't know when it took place. Is that right?

What do you want to say, Mr. Klein -- anything important?

MR. KLEIN: No, not important, your Honor.

THE COURT: All right, next. Objection sustained.

MR. KLEIN: I may point out there was no objection.

THE COURT: I am objecting. It is my duty to see that the witness isn't confused. Counsel is not attempting to confuse the witness but it is apparent to me as a matter of logic if he doesn't know whether something went before or after.

MR. KLEIN: The prosecutor asked what money were we talking about. Mr. Marcus asked the witness a series of questions about the four checks, the proceeds of the sale that Kelly, Andrews and Bradley sent over to Feis. That was the only money he was talking about. The prosecutor got up and said, "What money are we talking about"?

If there was any confusion in the prosecutor's mind, Mr. Marcus cleared it up and said "The four checks." He said, "Then I have no objection."

MR. SAGOR: Okay, I will object now, if that will help.

THE COURT: I will sustain the objection. I have to make sure there is no confusion here. I don't care who objects. Go ahead, you may proceed.

MR. MARCUS: Thank you, sir.

* * *

A Yes.

Q So at that time there was no doubt in your mind that there was a closing.

A Well, his Honor gave a definititon to the jury of a closing --

Q I asked you a question, Mr. Schiffman.

A There are two different closings.

MR. SAGOR: May the witness be permitted to answer, once having asked the question?

THE COURT: Yes. He should be permitted to answer.

By the way, the reason I'm not sustaining some objections to partially objectionable material is because the man on the stand is a lawyer and he is experienced in the securities business. That's why I am giving him more leeway than I normally would. He can handle himself.

MR. SAGOR: He has no leeway to explain what is happening.

THE COURT: That's why I am letting him answer. I'll let him explain it.

THE WITNESS: Your Honor, you gave a definition to the jury of a closing which is a good definition. But I don't know if that formal type of closing ever took place.

By closing here, we did receive stock. Therefore the company should have received the money, Cadgie Taylor should have gotten money turned over to them before we would have had stock in Cadgie Taylor delivered to us by Feis. So in that sense I was sure that a closing of some type had take place, and that seems to be the confusion.

MR. MARCUS: May I proceed, your Honor?

THE COURT: Yes. Go ahead.

BY MR. MARCUS:

Q Mr. Schiffman, did you have theCourt's definition of "closing" in mind when you testified before the grand jury?

A Excuse me?

Q Did you have the Court's definition of "closing" in mind when you testified before the grand jury?

A No. That's a real, formal, complete closing. I was talking about a closing in relationship to our receiving t securities from Cadgie Taylor, to deliver it to the customers or hold it in their account.

THE COURT: You say that you gave the four checks to Feis Securities on October 22nd through 29th, I think you testified?

THE WITNESS: The 21st through the 29th.

THE COURT: When did you get the stock to deliver to your customers, the Cadgie Taylor stock, as you recall it?

THE WITNESS: I think the 4th of November. I think that was the first time I got stock.

THE COURT: You got stock the 4th of November. So d[illegible]'t you infer from that that somewhere before the 4th of November Feis Securities had turned over the proceeds to Cadgie Taylor or Cadgie Taylor wouldn't have given them the stock to give to you?

THE WITNESS: Right; or on the 4th of November.

THE COURT. Or on the 4th.

THE WITNESS: Yes.

MR. MARCUS: Thank you very much, your Honor.

* * *

A It was discussed. Mr. Feis was the first one to bring it up, as I testified, that he only had until--120 days or four months, which was the 5th of October, and so that's when I said that I would backdate all of the billing that was going out from Kelly, Andrews and Bradley to the 2nd of October.

Q When you said that you would backdate, what, if anything, did Mr. Ridland say after you said that?

A That if it has to be done, all right.

Q I direct your attention to the phrase, "If not completely sold."

Would you tell the members of the jury the meaning of the word "sold"?

MR. BRILL: That is objected to, if your Honor please. He is not testifying as an expert.

THE COURT: I will sustain it as to form.

Do you understand the practice or custom of the trade in connection with new issues?

THE WITNESS: Yes, your Honor.

THE COURT: In relation to this subject?

THE WITNESS: Yes, a best-efforts underwriting.

Q Was this a best-efforts underwriting?

A Yes, it was.

Q In connection--

THE COURT: You may explain, then, the difference between a best-efforts underwriting and a firm underwriting.

THE WITNESS: This was a best-efforts, all or none underwriting, which meant that the underwriter had to use his best efforts to sell all of the securities. If he only sold a part of the securities, it was not enough. The full amount in the prospectus had to be sold. If it wasn't sold by a certain date, all of the money that was collected up to that point had to be returned to the customers.

In a firm underwriting, that is where the underwriter guarantees the sale of the securities. He actually pays for the securities to the company whether he sells all of the securities or not. This was a best-efforts, all-or-none underwriting.

MR. SAGOR: Your Honor, may I note the phrase on page one of the prospectus "the underwriter will use 'his best-efforts'?"

THE COURT: Yes. You can understand that the reason for it is, ladies and gentlemen, that suppose you want to sell $250,000 worth and you only sell $10,000 worth. Well, if I am one of those who bought the 10,000, I might say, that isn't enough to launch a company or have them do what they say they are going to do in a prospectus. You had better

give me my money back."

So it is provided that unless all is sold and it is announced in the prospectus, then you get your money back.

Go ahead.

Q Can you tell us whether or not the word "sold" includes receipt of the proceeds?

MR. BRILL: That is objected to, if your Honor please. It calls for an interpretation, an operation of the mind.

THE COURT: Is there any argument about it, Mr. Brill, technically?

Come up to the bench if you have anything else I don't understand.

(At the side bar.)

THE COURT: What is it all about, this thing? What are you trying to do?

MR. SAGOR: He will testify that it was a practice in the industry, understood, that "sold" meant not only sale but meant receipt of the proceeds. Indeed, this document will be offered through a subsequent witness from the SEC who will show that in the underwriting agreement, paragraph 206, it specifically says "it is hereby agreed between the company and the underwriter that unless the entire 125,000

* * *

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(In open court.)

Q Mr. Schiffman, just one more question in this regard.

When you said before that the entries were false, can you tell us whether or not the money was actually received in connection with the entry?

MR. BRILL: That's objected to, if your Honor please.

THE COURT: Overruled.

A We actually received the $40,000, yes.

MR. BRILL: That is not the question.

MR. SAGOR: That is not the question.

MR. BRILL: I move to strike the answer if your Honor please.

THE COURT: Yes. Strike the answer. Start all over.

Q I just meant with respect to the individual entry of $10,000, for example.

Can you tell us whether or not you received $10,000 in cash on that date in Kelley, Andrews and Bradley, to deposit it?

A Yes, we deposited $10,000.

Q And similarly with the 24,000, that too was deposited?

MR. BRILL: 12,000.

MR. SAGOR: 12,000. I am sorry.

A Yes.

THE COURT: And you didn't put down the true source, is that what it is?

A That's correct.

THE COURT: Okay.

BY MR. SAGOR:

Q Let's move on. Mr. Schiffman, in answer to Mr. Brill's question--

MR. KLEIN: Your Honor, I would take exception to your Honor's paraphrasing of the last remark.

THE COURT: All right.

Q Mr. Schiffman, Mr. Brill asked you why, or asked you among the reasons why, you testified here. Do you remember that?

MR. BRILL: I am sure I never asked why, Judge.

MR. SAGOR: No, he didn't.

THE COURT: You did ask him about his motive.

MR. BRILL: I did it in a proper legal way. Your Honor so ruled.

MR. SAGOR: I am going to do it in a proper legal way now, too.

THE COURT: He is just introducing it, that's all.

You may proceed.

Q Mr. Schiffman, would you tell the members of the jury why?

MR. BRILL: I am going to object to that, if your Honor please.

THE COURT: Overruled. You raised it in cross examination.

A I had pleaded guilty to indictments because I was guilty of the crimes that I pleaded guilty to and I was asked to tell what happened and I agreed to testify because it is the truth.

MR. BRILL: I move to strike the last part of that, "because it is the truth."

MR. KLEIN: He is certifying his own check.

THE COURT: Motion denied.

MR. BRILL: Respectfully except.

Q Now, moving on, Mr. Schiffman, do you remember yesterday, in the afternoon, in answer to Mr. Brill's question, you admitted that you had once lied to an Assistant United States Attorney? Do you remember that?

A Yes.

Q When did you in fact, if you did, lie to an Assistant United States Attorney?

A I was summoned to an office of an Assistant United

* * *

You are finished with this line. What is your next line? While we are up here, tell him so we can discuss it.

MR. SAGOR: I am just touching upon references, failure to name Midland in the testimony, very little more.

THE COURT: But this one I won't allow. I think it is too much.

MR. BRILL: I think, Judge, in order to comply with the requirements of the Second Circuit, I have to ask your Honor to instruct the jury to disregard that answer to which I objected.

THE COURT: Yes.

MR. BRILL: And--

THE COURT: I am denying your request. All right.

MR. BRILL: And I respectfully except.

THE COURT: All right.

(In open court.)

BY MR. SAGOR:

Q Mr. Schiffman, yesterday afternoon Mr. Klein asked you whether you had told any of the customers that you called up to sell Cadgie Taylor's stock to in October of 1970--whether you told any customers that there was a $40,000 payoff. Do you remember being asked that question?

A Yes.

Q And do you remember what your answer was?

A My answer was no.

Q Or "of course not."

Would you tell the members of the jury why you didn't tell any of your customers that you called up that there was a $40,000 payoff?

MR. KLINE: Objected to, your Honor.

THE COURT: Objection overruled. It is right in the line of the cross examination.

A Well--

MR. BRILL: Will your Honor regard that I have renewed the motion and the request in the light of that.

THE COURT: Yes.

MR. BRILL: Thank you, sir.

A It would be admitting a crime to them, and I doubt if that would have enticed them to buy the stock.

Q To your knowledge, would the SEC or the NASD approve a prospectus in which there was an indication of a $40,000 commission?

MR. KLEIN: Objected to, your Honor.

THE COURT: Sustained.

Q Do you remember Mr. Klein asking you about whether you testified in the Grand Jury about--strike that--whether you ever mentioned Mr. Ridland's name, G. Carman Ridland, in

the Grand Jury? Do you remember that?

A Yes.

Q Mr. Schiffman, can you tell the members of the jury sitting here whether or not you had referred to Mr. Ridland in your Grand Jury testimony?

MR. KLEIN: Objected to, your Honor.

THE COURT: Yes. It is too broad a thing. You say he didn't name him and yet he referred to him? How can you refer to somebody without naming him?

MR. SAGOR: All right. I'll proceed on that basis.

THE COURT: On what basis?

MR. SAGOR: I'm showing how someone can refer to someone without naming him.

THE COURT: You had better do that first. I am not saying you can't but I just don't see it offhand.

MR. KLEIN: Would your Honor please instruct the jury to disregard the colloquy?

THE COURT: Disregard the colloquy.

Q Mr. Schiffman, for the help of defense counsel, S.A. 7, 12/22/72.

Mr. Schiffman, were you asked this question and did you give the following answer--

MR. KLEIN: I am going to object to this as being

improper redirect and improper use of a prior statement of this particular witness by the prosecution.

THE COURT: Overruled in the context of what has happened.

MR. BRILL: Shouldn't you first ask a question as we were required to do before he goes to this.

THE COURT: He did.

MR. SAGNOR: I'll be glad. You objected to the question.

THE COURT: You objected to the question. He did as best he could. But I would suggest you show these gentlemen the thing you are going to read before you read it so we don't have another catfight here.

MR. SAGOR: I think they know it. Page 7.

MR. BRILL: Just wait a minute.

(Pause.)

MR. KLEIN: What he is attempting to do is substitute grand jury testimony which no defense counsel was present at--

MR. SAGOR: I am going to object to the characterization that no defense counsel was present.

MR BRILL: That certainly was true. There was no defense counsel present at the grand jury, and the law doesn't permit the defense counsel to be present at the

grand jury.

MR. SAGOR: Could the jury be instructed that the defense counsel can be present outside the grand jury room.

THE COURT: Yes, I am surprised at all of you. That includes every one of you. The most ridiculous thing I have heard.

Go ahead.

BY MR. SAGOR:

Q Mr. Schiffman, were you asked this question and did you give the following answer:

"Question. Now, several days after this, did there come a time when you again met Mr. Feis and Mr. Steel and with another individual, which individual was--and I emphasize the word "principal"--in this company, Cadgie Taylor?

"Answer. Yes."

Were you asked that question and did you give that answer?

A Yes.

THE COURT: Who was that gentleman?

Mr. Ridland.

Q Question--

MR. BRILL: There is no such word as I emphasize

in this statement, Judge.

There are no such words as "I emphasize" which Mr. Sagor just read.

MR SAGOR: I didn't object when Mr. Marcus did that very same thing.

THE COURT: I am getting more confused by the minute

MR. BRILL: Mr. Sagor in this question purportedly read from the Grand Jury testimony of this witness, and he read "with another individual, which individual I emphasize," and there are no such words in this grand jury testimony.

THE COURT: I didn't hear that. You shouldn't say that.

MR. SAGOR: The other counsel did. I'll desist from it.

THE COURT: You must not do that. When you read you don't have to say each time it is in quotes or inverted commas or whatever you want to say.

MR. SAGOR I thought I made it clear by my inflection.

THE COURT: You certainly should not interpolate when you are reading. Disregard that "emphasize".

MR. SAGOR: I'll read it again.

THE COURT: Read it straight.

MR. KLEIN: Before you do, I respectfully except to your Honor's question to the witness as indicating to the grand jury that the name was mentioned. It was not mentioned.

THE COURT: To the grand jury? You mean to this jury.

MR. KLEIN: To the jury, your Honor--

THE COURT: The name was not mentioned. It is perfectly clear. There was a reference to a person who was an officer or a principal, principal of Cadgie Taylor, and somebody, you or Mr. Brill or somebody, raised the question of whether he had ever mentioned Mr. Ridland before.

So he said he didn't mention him by name but he did mention him by status. So I am now clarifying it by asking him, and the answer can be either yes or no, who did he mean, and his answer was he meant Mr. Ridland when in the grand jury he said the principal was there.

MR. KLEIN: He didn't your Honor. It is all in the words of the U. S. Attorney who asked the question.

MR. SAGOR: That was the answer to the Court's question.

MR. KLEIN: All he said was yes.

THE COURT: It has been answered.

BY MR. SAGOR:

Q Mr. Schiffman, can you tell us who you were referring to by the word "principal"?

A Yes.

THE COURT: I just asked him that.

Q "Question. Or at least an individual who was represented by Mr. Steel and professed as being a principal in this company?

"Answer. Yes, sir."

Were you asked that question and did you give that answer?

A Yes, sir.

Q "Question. And was that meeting at the offices of Kelly, Andrews and Bradley?

"Answer. Yes, sir."

Were you asked that question and did you give that answer?

A Yes.

Q "Question. Present for that meeting besides yourself, Messrs. Feis, Steel and this principal, were there other people who were associated with Kelly, Andrews and Bradley?

"Answer. Correct."

Now, going on. SA 9, gentlemen, 12/22/72.

Were you asked the following questions and did you give the following answers.

"Question. By the way, was he the president of the firm, as far as you knew?

"Answer. Yes, sir."

Were you asked that question and did you give that answer?

A Yes.

Q Who were you referring to as the president of the company?

A Mr. Ridland.

MR. SAGOR: Your Honor, may we note in Government's Exhibit 1, the prospectus, that on page 11 under name and address under office, president and treasurer, his name G. Carman Ridland appears?

THE COURT: Yes, that's in evidence.

Q "Question. And he was a gentleman who had arrived from wher , as far as you remember being told by"--the exact

spelling here is F-e-i-r. May I assume that is a typographical error for Feis, your Honor.

THE COURT: For what?

MR. SAGOR: I am reading it exactly. I don't want to interpret.

THE COURT: What?

MR. SAGOR: The word Feis appears here as F-e-i-r.

Q "And/or Steel?

"Answer. I was told he was on the lecture tour in Nova Scotia, at the prior meeting, and they were going to call him and he would come down to New York for the meeting that we had set up.

Were you asked that question and did you give that answer?

A Yes.

Q Moving on. I will just do another one, your Honor

MR. BRILL: This is just reading the questions put by a prosecutor, whichputs the words in the mouth of a witness before the grand jury. I object to it, Judge.

THE COURT: Overruled.

Q MTC-2, 12/22/72.

Were you asked this question and did you give the following answer.

* * *

are just being marked now. They are all in evidence.

MR. BRILL: Yes, it is. I took it out for the purpose of showing it to the witness.

Q I show you Exhibit A5, consisting of three sheets, and ask you to tell us whether or not this is another one of those unusual situations in which there was a corrected confirmation?

A Yes.

THE COURT: What was the correction? That is what I don't understand.

MR. BRILL: I was just coming to that, Judge.

Q Can you tell us, please, what was the correction and the reason that prompted the necessity for sending the corrected confirmation on the date of October 28, 1970?

A There is no indication on here, so I wouldn't know.

Q You have no idea?

A No.

Q Now, I show you B-1 and ask you to tell us if this exhibit, consisting of four sheets, isn't another instance of a corrected confirmation being sent out?

A Correct.

Q And do you know what the correction was that was made on that?

A Well, they seem to be the same so I can't tell

by looking at them.

THE COURT: Maybe I can help you. I looked at them. Take a look at the trading slip, when it was actually traded. That's October 28, isn't it?

THE WITNESS: That's correct, it was traded on October 28.

THE COURT: And look at the slip you sent out as to when it was confirmed. Is that October 29?

THE WITNESS: Yes, the wrong date. It is dated October 29 and then it is dated on the stamp on the trading slip, which is October 28.

Q Does the trading ticket show the time of day on which the transaction was made?

A Yes, it does. It's the same one, by the way, on the other one. It is the same mistake.

Q Excuse me, please. Does it show that it was made at 3.42 p.m. on the 28th?

A No. It says- I think it is 3:10 or 3:13.

Q It was after the market closed, right?

A No, the counter market stays open after the Exchange closes.

Q And the bookkeeping department at the end of the day, when it gets these, sends out conformations either for that day or the next day, right?

A Well, they send out conformations for the date that the trade was made.

THE COURT: But in this case apparently they didn't, they sent it out the next day?

THE WITNESS: By mistake they typed in the wrong date so they sent out a corrected one.

Q And that happened frequently, is that right?

A I don't know. It may have happened one day or it may have happened on other occasions.

Q Like the difference between 28th and 29th, that's a typographical mistake?

A It's a transposition. They transposed the date on the trading ticket.

Q And that happened not only on B-1 but on A-5?

A It may have happened on all the trades that day.

Q How about this one on 10/27? That is a corrected confirmation. You can't tell it happened on that date, can you?

THE COURT: Have you got the trading slip there?

MR. BRILL: Yes, there is, Judge.

A The trading slip is dated October 27 but we don't have the original of this. All we have is the corrected one. So I don't know what the correction is on this one at all.

Q The corrected one is dated 10/27, the same date as the slip?

A Right.

Q And the time of day on the trading slip is 3:23 p.m.?

A Yes.

Q That is the trading ticket?

A The trading ticket is 3:23.

Q With respect to A-4, the time of the trade stamped is 3:07 and the date, the trade date, is 3:07 of October 30 and the trade date is October 30, right?

THE COURT: Is that enough on this line, Mr. Brill?

MR. BRILL: Yes, it is.

THE COURT: Let's go to something else.

MR. BRILL: May I just pass them to the jury, your Honor?

THE COURT: Yes.

MR. BRILL: Together with D in evidence.

THE COURT: Let me ask the witness something.

In the street dealing with an over-the-counter market, when another brokerage house buys the stock, they make a record at the time of the purchase and if you are selling you made a record at the time of the sale?

THE WITNESS: Correct.

THE COURT: And if you send them the wrong date, the other firm is likely to call up and say, "We bought it yesterday, not today," is that right?

THE WITNESS: That's right. It must match.

THE COURT: Could that be the reason why you sometimes have a correction?

THE WITNESS: Yes, it could be.

(Mr. Brill hands documents to the jury.)

BY MR. BRILL:

Q Since you began to testify here on Monday of this week, have you seen any other witness in this case?

A I saw a witness waiting in the witness room today. I saw him today when I went out during the lunch break.

Q He's the only one?

A That's correct.

Q Did you talk to him about the case?

A Not about the case, no.

Q No conversation at all about it?

A Not concerning the case.

Q I beg your pardon?

A Not concerning the case, no.

Q Did you talk about your testimony?

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(In the robing room)

MR. SAGOR: Your Honor, with respect to Schiffman, it will just be another few minutes. I didn't ask for this meeting in connection with that.

The next witness is going to be Dominick Bassani, and a problem occurred before which I want to bring to the Court's attention.

At the break, during the luncheon recess, in connection with his testifying I started to speak to him. Mr. Doonan was in the room. We asked Mr. Bassani if he could recognize Mr. Ridland and Mr. Steel and Mr. Feis, as we had done before, and he said he could.

Unfortunately, and inadvertently, thereafter Mr. Doonan said the three of them would be sitting inside the rail. I bring this to the Court's attention.

I thereafter left and spoke to my office for instruction. I told Mr. Doonan to no longer talk to Mr. Bassani at the moment, and I came back and told Mr. Bassani to disregard anything that Mr. Doonan said, they may or may not be in the courtroom, they may or may not be in the inside rail. I bring this to the Court's attention for whatever action you want to take.

THE COURT: I think what we ought to do is let them sit with the lawyers then and let a lawyer or two

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sit in the back and see what they do.

MR. KLEIN: That is very serious, your Honor, because my client told me he never met Mr. Bassani.

THE COURT: I didn't say it isn't serious. I am trying to straighten it out.

All right, what should I do?

MR. BRILL: I think your Honor's suggestion is a good one. I think they could all be moved right up to the table and sit with us.

THE COURT: Yes.

MR. SAGOR: Just two other things.

One. Bassani has identified all three of them in a photo spread a few weeks ago. I could show that to defense counsel, though I don't think this is a case of identification.

MR. BRILL: Well, now I think we have reached a point at which the seriousness of the problem really rises to some proportion.

THE COURT: What do you mean?

MR. BRILL: Photographs three weeks before the trial.

MR. SAGOR: I'm sorry. There are many other photographs in the spread. There are just not three; maybe eight or ten. I don't know how many. I forget. I'll

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be glad to show that to you.

MR. KLEIN: We'll probably go into a Wade hearing -- no, not a Wade hearing, a Simmons case.

MR. SAGOR: That does not give the right to have counsel present at a photograph showing.

MR. KLEIN: We also have a Massiah situation -- not a Massiah. We have a situation where, after indictment and prior to trial, you show photographs to a Government witness, a prosecution witness, in which the defendants' pictures are included. I think we have to have an inquiry into it.

MR. BRILL: I am going to move to exclude the testimony of Mr. Bassani, your Honor, on the basis of that action on the part of the prosecution.

THE COURT: What action?

MR. BRILL: Showing him the photographs of the defendants three weeks in advance of the trial. What purpose would there be in doing this?

THE COURT: It is a spread of photographs.

MR. BRILL: And, your Honor, this occurs at a time when the prosecution knows that Bassani is going to be a witness.

MR. SAGOR: Yes, of course. I see no problem with that.

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MR. BRILL: I do.

THE COURT: The problem is that I don't know when he started to cooperate with theGovernment, but he pleaded guilty only recently, and I assume before he pleaded guilty they couldn't very well show him any photographs.

MR. BRILL: Judge, it will develop that he made a deal with the Government sometime early this year or late last year.

THE COURT: That I don't know.

MR. BRILL: It will come out; that he made a deal that he would plead to one conspiracy count and one stock fraud and be available in all the other cases that he is called upon to testify in. That will be developed.

MR. SAGOR: That is true.

MR. BRILL: Of course it is true. I would like to say something else: that I have made efforts to interview this man, but they have been fruitless, and I have advised Mr. Sagor aboutthat.

Mr. sagor said, "Would you like to interview him? Interview him any time you like." And I said, "Please make him available," and Mr. Sagor said he couldn't.

MR. SAGOR: I don't remember this conversation. The record should be clear that before Judge Gurfain even it was brought out when Mr. Bassani took his plea that he was

free to talk to anyone whom he wanted.

THE COURT: Yes. I think I remember that.

MR. SAGOR: I specifically told him.

Anyway, let me flesh out the rest of it. After I gave Bassani those instructions, he told me that he in fact had seen Mr. Ridland in the hallway while he was waiting for the recess and indicated to me on his own motion that he had seen Mr. Ridland and Mr. Ridland looked the same to him as he had done before.

MR. BRILL: On the photographs.

MR. SAGOR: No, no, no; from his viewing Ridland when he met Ridland.

Let me help you while we are fleshing out this issue. The prime reason, by the way, that he remembers Ridland is because Ridland looks to him like Tom Landry of the Dallas Cowboys, and my little knowledge of football tells me that that's so.

Anyway you want to handle it, we are prepared to put in the pictures if you want to make an issue of it and to have a lineup at this point, if you want to make an issue of it. I don't think there is really an issue here, but I bring it to the Court's attention as an officer of the Court.

MR. KLEIN: What was the purpose of showing him

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photographs if he was sure of the identification in the first place?

MR. SAGOR: Because this case was transferred to me. I was not the prosecutor who presented it in the grand jury, and as a rule I do have photo spreads in a case that I am not familiar with. I wanted to see if he truly recognized Mr. Ridland, and I wanted to evaluate, myself, his own reaction to the picture. And he spotted him right away.

THE COURT: I'll say this. If you insist on a Simmons hearing or something of that kind, I'll do it. If you feel it is necessary, if it is going to get you anywhere, I'll do it. I don't know. You are not dealing here with an instant identification on a bank robbery, where they see a man for a minute and a half and he is wearing a ski mask. This is allegedly a group of people who sat with them for, I suppose, at least a half hour or an hour.

MR. SAGOR: I think the Bassani connection is -- well, Steel and Feis were up there constantly.

With respect to Ridland, the meeting, I think, with Bassani would be about five minutes.

THE COURT: Five minutes.

MR. KLEIN: Similar to a bank robbery.

* * *

MR. BRILL: That is objected to, if your Honor please. This is not proper re-redirect examination.

THE COURT: It is. You are overruled. You may answer.

A Well, as I testified to, all of the stock was decided to be billed on October 2nd, all of the stock that we were going to sell in the underwriting.

So some of the customers that were billed in September, all of the billing was re-done and dated October 2nd.

Q For stock sold after October 2nd, what, if anything, was put on the copy of the customer's advice?

A Stock that had been sold in September?

Q No, stock sold after October 5th.

A All of it was put October 5nd, and the ones that were billed were corrected.

Q For example, in accordance with your testimony if stock was sold on October 20th, what would the confirmation slip say?

A October 2nd.

Q That confirmation slip would say corrected copy, too?

A It may or may not.

Q If it did not, what would it say?

MR. BRILL: That's objected to as speculative.

THE COURT: It is speculative.

Let me ask you something:

There are two kinds of sales that you made, one with private people and the other with brokerage houses, is that right?

THE WITNESS: That's right, your Honor.

THE COURT: Now, when you sold to a private person, and you had a wrong date on, did you get any protest generally or any conversation about it?

THE WITNESS: No.

THE COURT: When you sold to brokers and you had a wrong date, did you have a request for a re-billing?

THE WITNESS: You would automatically get a request if there was a mistake to a broker.

Q To your knowledge, what, if anything, was said to customers about the October 2nd billing, to your knowledge?

A That that was the date that it was going to be billed on, October 2nd, pay no attention to it.

Q Directing your attention to Defendant's Exhibit A-4, do you remember that was a purchase by Kelly, Andrews and Bradley from Chernok, I believe, for $2.25; do you remember that?

A Yes.

Q And do you remember Mr. Brill asking you why you bought stock at $2.25 which you did not think was worth $2, do you remember that?

A Yes.

MR. BRILL: I didn't ask that question, Judge. I asked if it was the same stock he bought that he sold for $2 which he said wasn't worth $2 which he paid $2.25.

THE COURT: You asked him whether he bought back stock which he thought was worth less at $2 and a quarter.

MR. BRILL: That's more closely it. It is not the thing Mr. Sagor is saying.

THE COURT: Let me straighten it out, if nobody minds.

I think you were asked whether you bought back stock for $2 and a quarter which you thought was worth less and you bought it for your own account to own it, is that correct?

THE WITNESS: I was asked if I did that, yes, and if I testified that I thought it was worth less, and I said yes.

MR. SAGOR: Thank you, your Honor.

Q Now, I will ask you to explain to the members of the jury why you purchased stock in late October for $2,05

* * *

A Yes, of course.

MR. BRILL: Thank you.

MR. SAGOR: Your Honor, I am not disputing that. I am bringing out something else.

THE COURT: You are not disputing it but you are casting doubt on a very simple issue, it seems to me, what Mr. Brill said is what you have already established.

MR. SAGOR: No doubt. Both of you established the same thing.

BY MR. SAGOR:

Q Mr. Schiffman, how many people was it your understanding that purchased Cadgie Taylor stock as a new issue?

MR. BRILL: I object to this. Now we are in the re-re-redirect.

THE COURT: Let me ask you a simple thing. Did one person buy the whole 100,000 shares?

THE WITNESS: No, your Honor.

Q Did more than one person buy the 100,000 shares?

A Yes.

Q Did a lot of people buy the 100,000 shares?

A Yes.

THE COURT: The number is unimportant.

MR. SAGOR: Thank you.

BY MR. BRILL:

Q And they are all listed on Exhibit D?

MR. SAGOR: That is my objection. That is not so.

Q They are all listed on Exhibit D, is that so?

THE COURT: He said some other brokers sold it to their customers and it would not be listed on Exhibit D. Is that correct?

THE WITNESS: Yes.

THE COURT: Now it is straightened out.

MR. BRILL: Thank you very much.

(Witness excused)

THE COURT: Go inside and remain there. Don't talk to anybody else.

Ladies and gentlemen, we have some legal work to do. So I will excuse you now and again admonish you not to discuss the case and not let anyone discuss it with you and don't form a final opinion as to the guilt or innocence of the defendants until the case is submitted to you. Be here at 10 o'clock tomrrow and we'll see if we can proceed at that time.

THE CLERK: Jurors excused until 10 a.m. tomrrow morning.

* * *

A I believe it was the early part of September, right around the 15th.

Q Anybody else present?

A Mr. Stuart Schiffman was present.

Q Anybody else?

A No one else was in the office when I was there.

Q How long -- who introduced you to Mr. Ridland?

A Mr. Schiffman.

Q And how long was Mr. Ridland in your presence?

A No more than five minutes, probably less.

Q That was the first time you had seen him?

A That was the first time and only time I had seen him.

Q First and only time?

A That's correct.

Q Did there come a time when you were indicted in this case?

A Yes, there did.

Q And then you pleaded guilty?

A Yes, I did.

Q Were you at any time shown a photograph of Mr. Ridland by anybody in the prosecutor's office?

A I was shown a number of photographs. There

was appr ximately, I would say, ten, and I was asked to pick out from that grouping of photographs anyone that I knew. Mr. Ridland's photograph was among them.

Q And do you know whether the other photographs, the other persons or likenesses were similar in appearance to Mr. Ridland?

A I can't remember. I picked out four or five of the people in there. I can't remember right now what the others looked like.

Q Do you know how tall any of them were?

A No. These were not full photographs. They were just from approximately the chest up, I would imagine.

Q Do you know whether or not the others had similar characteristics?

A I cannot remember, sir.

Q Do you know whether any of the others -- the photographs of any of the others had hair on their head?

A I can't remember.

THE COURT: Who showed you these photographs, Mr. Bassani?

A Mr. Doonan.

THE COURT: Mr. Who?

THE WITNESS: Mr. Doonan.

Q Mr. Doonan is an investigator for the U. S. Attorney's office, is that right?

A That's correct.

THE COURT: About when was it he showed you these pictures, if you recall?

THE WITNESS: In the last couple of weeks, three weeks, two weeks. I don't recall exactly when.

Q This was after you decided to become a witness for the prosecution in this case, is that right?

A Yes, that's correct.

Q Did Mr. Doonan tell you that this was a case involving Mr. Ridland, Mr. Feis and Mr. Steel?

A No. Mr. Doonan took out a package of photographs and he said to me, "Pick out who you know here." And that was it. He didn't mention Cadgie Taylor, he didn't mention the case, he didn't mention anything, and I proceeded to pick out. Because there were people there other than involved in this case.

Q But you knew you were going to testify in this case, is that right?

A I knew I was going to testify in this case.

Q And you knew who the defendants were in this case, didn't you?

A I knew that when I was indicted.

Q So when you were preparing for this case and he asked you to pick out who you knew, you understood he meant Mr. Feis, Mr. Steel and Mr. Ridland, the co-defendants remaining in this case, is that right?

A No, because this was not the first time Mr. Doonan had showed me photographs and asked me to pick people out. Until I opened the packet, I didn't know what was there or what it was in regards to. It could have been in regards to another investigation.

Q Let me stay with the photographs. Do you honestly and truthfully say at this moment that the identification you just made of Mr. Ridland is an independent recollection of your less than five-minute meeting four years before or is it possible that you are saying Mr. Ridland is the same person that you identified from the photograph?

A I had a very good recollection of what Mr. Ridland looked like.

Q Let me ask you this, then: Absent the showing, the intervening showing, of the photographs, would you have been able to identify Mr. Ridland?

A Yes.

Q Did you have a conversattion with Mr. Doonan in the witness room a little while ago?

A Yes, I talked with Mr. Doonan and Mr. Sagor.

Q Did Mr. Doonan tell you that the three defendants, Ridland, Feis and Steel, were grouped together sitting inside the rail of this court?

A He di. say that, yes.

Q Was Mr. Sagor present when Mr. Doonan told youthat?

A Yes, he was.

Q What, if anything, did Mr. Sagor say?

A Mr. Sagor -- I don't remember his exact words, but they were to the effect "You should not have said that."

Q What els. as said by Mr. Doonan as to the ide tification of the three remaining defendants in this case?

A You mean just now outside?

Q YEs.

Other than they were sitting inside the rail, nothing.

MR. KLEIN: Would your Honor bear with me for just a moment?

THE COURT: Yes.

(Pause)

MR. KLEIN: May I ask for the production of the

photos in the packet that was exhibited to Mr. Bassani?

MR. SAGOR: Yes, your Honor, we will produce them.

MR. KLEIN: For each time he was shown the photographs.

MR. SAGOR: Excuse me.

MR. KLEIN: Mr. Bassani testified he was shown photographs on other occasions by Mr. Doonan.

Q How many other occasions were there, Mr. Bassani?

A Once or twice.

Q And were you able to identify Mr. Ridland each one of those times?

A No. What I was saying to you before was that when he showed me photographs on other occasions, they had no bearing on this case. They were involving other cases. So that I didn't know what he was showing me until I opened it up and looked to see who was there.

THE COURT: How many times were you shown the batch of photos which to your recollection showed Mr. Ridland?

THE WITNESS: Only that once.

THE COURT: That is what Mr. Klein wants.

(Pause)

MR. KLEIN: May the record indicate I have been handed a packet of ten photos --

THE COURT: You don't have to indicate anything. The package can be marked as an exhibit, if you wish it to be.

Q Let me ask you if you recognize now all these pictures as being shown to you at that time, as being the same photos that were shown to you (handing)?

A I recognize some of them. I couldn't swear to all of them.

Q During that less than five-minute conversation four years ago -- would you please pick out the ones you don't recognize?

A I recognize the ones that, you know, that I had picked out that day.

Q I am talking about the others.

A The others I don't know if they are the same or not, because I didn't recognize the faces then.

Q You look at these pictures. I've extracted the ones of Mr. Feis, Mr. Steel and Mr. Ridland.

A This one I recognize (indicating).

Q I ask you, tell me how many of those have black hair?

A The pictures are in black and white.

Q How many of those have hair?

MR. SAGOR: Where?

MR. KLEIN: On their head.

A This one has a full head of hair; this one has a full head of hair; this one has a full head of hair and it is receding, it appears. This is cut very short and receding. This one has a full head of hair. This one is receding. And this one has a full head of hair.

Q Now, do you see Mr. Ridland? Do you see Mr. Ridland there (indicating)?

A Yes, I do.

Q Would you say he is bald?

A Yes.

Q Do you see any other baldheaded men in these seven pictures that you all said had a full head or receding hair?

A No.

Q Do you see any there with mustaches?

A Two.

Q Did you ever see Mr. Ridland with a mustache?

A Not as I remember him, no.

Q Did you ever see him with hair on his head?

A No, definitely not.

Q Is Mr. Ridland Caucasian?

A Yes.

Q Anybody in those photographs who is not Caucasian?

A No.

Q (Indicating).

A Excuse me. One.

Q How is that?

A I don't know. They are all black and white. You can't tell. It is very difficult.

Q During the less than five-minute conference or meeting that you say you had with Mr. Ridland and the other gentlemen four years ago, what, if anything, what, if any, words were exchanged between you and Mr. Ridland?

A Other than saying hello, there was no conversation between myself and Mr. Ridland. He was talking about the company and the properties that they had and what he expected to be done with it.

I listened to it for a couple of minutes and I walked out. I left him with Mr. Schiffman.

Q While you were there, what words did you hear him say to Mr. Schiffman?

A He was talking about the properties that the Cadgie Taylor Company had, in terms of their potential, the program of drilling that he was going to go into, and that was really the conversation that he was having and that was about it. I didn't stay very long. I don't even think I was there five minutes. It may have been less.

Q You don't recall any other conversation that you heard?

A No. I was not -- I wasn't interested, really.

MR. KLEIN: Your Honor, at this time I am going to ask that these be marked individually as to the description given by the witness. I ask that the photographs of Mr. Steel be marked.

(Defendant Ridland Exhibit A was marked for identification.)

MR. KLEIN: And Mr. Feis.

(Defendant Ridland Exhibit B was marked for identification.)

MR. KLEIN: Mr. Ridland.

(Defendant Ridland Exhibit C was marked for identification.)

THE COURT: Do you want to mark the others as

one batch?

MR. KLEIN: No. I would like to mark them separately, I think.

THE COURT: Well, do it. It is almost 4:30. Take them all and give them consecutive numbers, all the rest.

BY MR. KLEIN:

Q Was Mr. Ridland present or did he have his attorney present at the time of your viewing the photographs?

A No.

Q You testified that you picked four or five out of the ten?

A Yes.

Q And who are the others besides the three defendants in this case?

A Arnie Widlitz --

Q Which one is he?

A I put him aside for you before. And the other ones --

THE COURT: Take them back, then. Pick out Widlitz and give him a letter.

Q Who else besides Widlitz?

A George Van Aiken.

THE COURT: This is Widlitz. D is Widlitz.

xxxx (Defendant Ridland Exhibit D was marked for identification.)

Q Who is the other fellow?

A George Van Aiken.

THE COURT: George who?

THE WITNESS: Van Aiken.

THE COURT: All right. He is E.

xxxx (Defendant Ridland Exhibit E was marked for identification.)

Q Do you know any of the other people who you haven't mentioned?

A No.

Q Do I understand that you knew Feis before?

A Yes.

Q You knew Mr. Steel before?

A Yes.

Q You knew Mr. Widlitz before?

A I had met Mr. Widlitz twice, I think.

Q And you knew Mr. Aiken?

A Van Aiken. I had met him a couple of times, yes.

Q That is four of the nine, is that correct?

A That's correct.

THE COURT: Who else did you recognize? Any other photos?

A Just those five, your Honor.

THE COURT: Just those five.

Q So that actually, other than Mr. Ridland's photo, there were five other photos shown to you whom you did not know of persons with whom you were not acquainted.

THE COURT: Rephrase that question. You are mixing yourself up.

Q You were shown ten photos, am I correct?

A That's correct.

Q One of which you identified as Mr. Ridland.

A That's correct.

Q Four of which you knew.

THE COURT: He says five.

A Four I identified besides Mr. Ridland.

Q Besides Mr. Ridland.

A That's correct.

Q And there were five unidentified strangers to you in the photograph.

A That's correct.

Q And of those strangers they all had hair, and would you say that their facial characteristics were different than Mr. Ridland's?

A Yes.

THE COURT: What was the conversation with Mr. Doonan that preceded his showing you pictures, do you recall?

THE WITNESS: Mr. Sagor was talking to me and

asking me some questions, and I think he asked Mr. Doonan -- I don't remember exactly -- if he had something, I don't know, a copy of the indictment or something he was talking about - I think, "Do you have that to put in?" And I think he asked me, you know -- I don't know; I think he asked me, "You've identified him?" And I think Tom said --

MR. BRILL: I can't hear the witness, your Honor.

THE WITNESS: I think Mr. Sagor asked me, you know, about identifying him. I don't know if he asked Mr. Doonan about thephotos and at that point Mr. Doonan said, you know, that they were sitting inside the railing.

BY MR. KLEIN:

Q When he said to Mr. Doonan something about the indictment, he meant the indictment in this case?

A I don't know if it was that or, you know, something else.

Q Of the five other persons in the photographs --

A Yes.

Q -- had you seen their pictures before during any of the other photograph showings?

A I couldn't say.

Q Is it possible that they were in those other groups?

A I just couldn't say. I don't remember.

THE COURT: Let me ask you this on the form of it. Were you asked whether you could identify Mr. Ridland or were you asked which of these people in the ten photographs do you know and who are they?

THE WITNESS: I was asked to pick out who I knew there, and I was given the batch of photographs.

Q May I see the photographs from the other showings?

THE COURT: Are you going to be long?

MR. KLEIN: No. I just want to see if they have the same people in there, the same other unidentified people.

THE COURT: Do you have a packet of the others that were shown?

MR. SAGOR: Your Honor, I'm told we don't have any other pictures.

THE COURT: All right.

MR.KLEIN: Will the Government represent, make a representation, as to whether any of these unidentified five, whether their photographs were in the other photograph lineups?

MR. SAGOR: I didn't hear. I'll just report what Mr. Doonan has told me: that he does not have packets from the other cases that he had asked him about, or from

the other times that he had asked him about.

THE COURT: It is four-thirty and I've got to let the reporter go and I've got pretrial hearings that will probably run until six. So what I suggest we do is meet at 9.30 tomorrow morning, because I told the jury to come in at ten, and then we can proceed with the rest of this hearing.

MR. KLEIN: May I ask that the witness be instructed not to discuss this with the prosecution?

THE COURT: Definitely.

Don't discuss anything with the U. S. Attorney's office.

MR. KLEIN: Or Mr. Schiffman.

THE COURT: or with the defense, or with Mr. Schiffman.

MR. KLEIN: Is Mr. Schiffman being directed to return here tomorrow morning also?

THE COURT: I haven't done it yet, but the United States Attorney can do that. I don't have to direct him.

MR. KLEIN: Mr. Sagor was going to find out from Mr. Doonan whether Mr. Schiffman had also been shown any photographs.

THE COURT: He'll do that. He'll report

* * *

A Yes.

O And did you discuss this case with him?

A Yes, I did.

O And then he showed you a packet of photographs and asked you -- is that right?

A He did not show me a packet of photographs. Mr. Doonan gave me a packet of photographs.

O After you went through the photographs, did you continue your conversation with Mr. Sagor?

A Yes.

O So in the midst of the conversation about this case a packet of photographs was handed to you and you were asked if you could pick out anybody in there, is that right?

A Approximately, yes.

O Didn't you understand they were asking you -- if you could identify anybody in this case?

A When I was given the packet of photographs, no, because on other occasions when I was being interviewed about other things I was given photographs to look at that were totally unrelated to it. So I didn't draw that conclusion. You know, I wasn't prepped to look at photographs that day.

O When was the last time you spoke to anybody in the prosecutor's office?

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MR. KLEIN: At this time, your Honor, I would like to invite your Honor's attention to page 820.

"Mr. Klein: May I ask that the witness be instructed not to discuss this with the prosecution?

"The Court: Definitely. Don't discuss anything with the U. S. Attorney's office.

"Mr. Klein: Or Mr. Schiffman.

"The Court: Or with the defense or with Mr. Schiffman."

THE COURT: Discuss anything, meaning anything about the case, I suppose.

All right, I've given you quite a bit of leeway now, Mr. Klein, and unless you have some new point I would like to ask you to desist from further cross examination.

MR. KLEIN: I think if your Honor does that you are curtailing my right to cross examination. I haven't completed it.

THE COURT: If you want to make a record, go ahead.

MR.KLEIN: Not for the purpose of a record. I have a duty. And your Honor has done this in front --

THE COURT: You keep repeating the same thing, is what I'm talking about. That could go on, you know, like a six-day bicycle race.

MR. KLEIN: I'll try not to repeat.

THE COURT: Don't repeat and I'll give you all the leeway you want.

BY MR. KLEIN:

O Were you indicted in two other cases?

A Yes.

O One of which was obstructing --

THE COURT: I am not going to allow credibility now. This is merely for me on the question of whether or not there was a taint in the identification.

MR. KLEIN: All right. I just wanted to show he had an inducement to identify him here.

THE COURT: You don't have to show me anything. That is not my province at the moment.

O Were you told when you were asked to come down to Mr. Sagor's office, that among the things they wanted you for was, besides discussing the case, was to identify some photos?

A No. I was just told to come down to the office.

O Is it your testimony that the photograph of Mr. Ridland which you identified from this packet is a good likeness of Mr. Ridland?

A A good likeness.

O If you close yoru eyes, do you have a vision

* * *

and Ridland's picture?

A Yes.

O And Widlitz' picture and Van Aiken's picture, right?

A No.

O You mean you just got Van Aiken's picture in there by chance?

A Yes.

O How about Widlitz' picture? By chance?

A No. Widlitz, Feis -- I believe it was Widlitz. I'm not sure on Widlitz. Feis, Ridland and Steel, those three pictures were gotten by Mr. Sagor from the Marshal's office.

O By name?

A By name. And he asked me to make duplicate copies of those pictures.

I made copies of those pictures and I then went down to the Marshal's office and just went -- they had a drawer. I pulled the drawer out and I asked them for seven or eight pictures to be pulled out. And he pulled the pictures out for me. I took those pictures and went upstairs and I made copies of them.

O Did you tell him that you wanted pictures of Negroes or white people?

A I told him I wanted pictures of white people and

pictures of people who were dressed in suits so they all would look alike.

O And you are telling us now that Widlitz and Van Aiken's pictures were in there out of those seven or eight that he picked?

A Definitely Van Aiken, yes. I'm not sure about Widlitz, whether I had Widlitz' picture already or not.

O Do you know how many pictures the Marshal had downstairs?

A Yes.

O About how many?

A I would have to take a guess.

O Guess.

A A couple of thousand.

O And can you compute the orders on Mr. Van Aiken's picture being in there?

A Mr. Klein, I'm telling you what happened. And what I'm saying is the truth.

O You asked him to give you pictures of men wearing suits who all looked alike, is that right?

A Yes.

O Now, does Mr. Feis, Mr. Steel and Mr. Ridland, do they look alike to each other?

A No, they don't look alike.

Q Did you ask for pictures of men with bald heads?

A No.

Q Did you ask for pictures of men wearing glasses?

A No.

MR.KLEIN: I have no further questions.

Oh, excuse me.

Q The other afternoon Mr. Bassani came into the witness room and you saw him, is that right?

A Yes.

Q Did you have a conversation with him?

A Yes.

Q And what did you tell him?

A I had asked him if he knew who Steel and Ridland was, and he said yes. And I said, "Well, they are sitting by the rail in the back."

Q You pointed out the location in the courtroom, is that right?

A That's what I said.

THE COURT: Why did you say that?

THE WITNESS: I don't know. It was done without malice and it was strictly an innocent comment, really. I mean if I thought there was anything wrong with it I would have never said it.

Q Your interest in this case as investigator or

as to insure prosecution and a verdict of guilty, is that correct?

A (No response.)

O Aren't you interested in the prosecution of this case?

A I am.

O And isn't it important that the witnesses identify the defendants?

A Well, it is important, yes. But I'm not here to insure that we win, if that's what you are trying to say.

BY MR. KLEIN:

Q You volunteered the location of defendants in the courtroom. Were you unsure of the identification?

A No, I wasn't.

Q Were you unsure that Mr. Bassani would be able to identify these people?

A No.

Q You were certain he knew what they looked like?

A As far as I knew what they looked like.

Q So there was no need, really, then, to point out their location, was there?

A No, and I didn't do it for that purpose.

THE COURT: I am trying to figure out why you did it.

THE WITNESS: First of all, I didn't know it was wrong to say what I said, to begin with.

THE COURT: It is not a question of right or wrong of what was your reason for saying it.

THE WITNESS: I think I was just making conversation with him. The only thing I was doing was making conversation and it didn't dawn on me there was anything wrong with it. I spoke with Mr. Sagor about it and I thought in my mind after I did it and he had told me I had done something wrong, I was thinking, all right, if they just move them around

* * *

A I really don't recall. He may have.

O Did you admonish him not to walk to the door during the recess because the defendants were there and there might be conversation or what?

A No, I said nothing to him at all about walking.

O Did you tell him to walk and try to pick out who they were?

A No, sir.

O Did he tell you that he saw Mr. Ridland in the corridor?

A Yes, he did.

O Then you know he looked into the corridor, is that right?

A He didn't tell me he was standing there looking into the corridor. He may have come up at the elevator at that time.

O Where did he say he saw Mr. Ridland?

A He didn't say. He just said he saw him in the hallway. He didn't say where he was.

O He wasn't behind the wall?

A He may have been out in the hallway there when he saw him. He may have been coming up the elevator.

O Did he volunteer this or did you ask him: "Did you recognize any of the defendants?"

A I think he volunteered it.

O Like you volunteered the suggestion to him the defendants are sitting in this location, like you volunteered he volunteered, is that right?

A I wasn't suggesting to him anything. I made the comment and in my mind I wasn't suggesting anything to him.

O If he knew Mr. Ridland, if he could identify him, why do you think he said, "Oh, I saw" -- did he say, "I think I saw Mr. Ridland in the corridor," or "I saw him in the corridor"?

A I believe he said, "I saw him in the corridor."

O Why did he make a point of that? Did he say he saw the others in the corridor?

A No. I think this came up after I had made that comment to him. I felt pretty bad after I said it and I didn't say anything. Mr. Sagor said that I had made a mistake and I shouldn't have said that.

O What did you tell Mr. Bassani when you showed him the photographs? What did you say to him?

A I took the photographs and I spread them all out on the desk and I said to Mr. Bassani, "Can you identify anybody in those pictures?"

That is all. I gave him no names.

O Did you make it clear to him that the subject

* * *

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gwe 4 Bassani -

MR. SAGOR: Mr. Doonan whispered to me when Mr. Bassani said he had seen some previous records, and Mr. Doonan said his recollection was refreshed by a prior showing. If you want to, you can inquire. It doesn't matter to me. There is a seeming inconsistence.

MR. KLEIN: There is an inconsistence. Do you want to call Mr. Doonan back to the stand?

MR. SAGOR: I do not.

MR. KLEIN: I ask the prosecutor's comments not be taken as evidence.

THE COURT: Is there anything else?

MR. KLEIN: I would like to move.

THE COURT: Move.

MR. KLEIN: I move that the identification--the first motion is at identification of Mr. Ridland by this witness be stricken and he be precluded from identifying him.

THE COURT: I will deny the motion. Let me state the reasons on the record. In the first place, I want to commend Mr. Sagor, the Assistant United States Attorney, for bringing this matter to the Court's attention, which defense counsel knew nothing about.

Secondly, I am sorry that Mr. Doonan made the remark he did and I believe that all employees of the prosecution should be cautioned against--specifically cautioned

against even inadvertently suggestions about the identification of witnesses in courtrooms. We recognize that in most cases tried in this building, certainly were there any single defendants, the defendant generally is sitting with his lawyer. It is a common practice simply to say, do you see the defendant in the courtroom, which one is he. It is obvious who it is. It couldn't be anyone else.

So it is not pressed for the very simple reason that in most cases it is an identification simply for the record.

Now, with respect to two defendants here, that is obviously true, that as far as Mr. Steel and Mr. Feis are concerned, Mr. Bassani apparently met them on a number of occasions and knows them. As far as Mr. Ridland is concerned, he said he met him once.

But this is not a case of a fleeting identification in a bank robbery where a suggested photograph might create an identification or make it impermissibly suggestive as the Court said in several of these cases.

Here we have a case where a man came into discuss an underwriting, said he was the president of the company, discussed the affairs of the company, was introduced by the name Ridland, the witness had a fair opportunity to observe him, the witness had a particularly mnemonic device in this

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case because of his apparent belief that the defendant Ridland looked like a well-known coach of the Dallas Cowboys.

Now, I want to say further however, that I think the practice used by the Government here, if it had any indication there was an identification problem, was wrong, that you can't for the purpose of identification, make a batch of photographs which do not contain any of a similar visage. The idea of showing photographs where one man is bald and all the others have hair is certainly not a proper type of photographic showing, and I want to caution the United States attorney it is not the way to do it.

The reason I assume it was done that way is because there was no question about whether or not there was an identification, and if that's so, however, it is rather difficult to understand why these pictures were shown at all in this case.

It is not a case, as I say, of a bank robbery. The Government went fairly close to the edge in taking a risk in showing photographs.

However, I am convinced by the demeanor of Mr. Bassani, by the circumstances that I have related that his identification in the courtroom during the hearing of Mr. Ridland was not a tainted identification based on this unfortunate series of events created by the Government.

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Now, what I will do, then, is to deny the motion, Mr. Klein and allow you to cross examine Mr. Bassani with respect to the identification with as great leeway as you had in this hearing with respect to his credibility on the identification, but I am going to let it go to the jury on the question of the weight.

The reason I am doing that is because of these errors by the Government.

MR. KLEIN: Your Honor, let me point out two things. Your Honor touched on one, and that is it was an unfair photographic lineup, which your Honor pointed out.

Secondly, whether or not inadvertent, Mr. Doonan's actions really tainted the situation here.

THE COURT: Let me state for the record on that and I should have stated it, that so called taint I believe was effectively removed by the lineup which we created in which the defendants were removed from the seats where they were at the time and Mr. Doonan pointed them out. I intentionally mixed them up with the lawyers and it is my view, and I stated on the record, that they were so mixed up that any prior pointing out by Mr. Doonan was completely vitiated.

MR. KLEIN: Except there was an intervening incident and that was between the time Mr. Doonan pointed out the location and the time that the witness came in and iden-

gwe 8 156a

tified Mr. Ridland in the mixed up seating arrangement, he testified he had seen Mr. Ridland in the corridor. So three weeks after being shown the photographs and having Mr. Doonan point them out--

THE COURT: Under all the circumstances, it seems to me I am certainly going to believe Mr. Bassani to the point of allowing him to testify in this case, and you may, of course, attack him on cross examination.

MR. KLEIN: Would your Honor permit us to call Mr. Doonan as a witness and let the jury decide the weight of it.

THE COURT: No.

MR. KLEIN: They should have the full picture of what went on.

THE COURT: No.

MR. KLEIN: I can develop it through Mr. Bassani then.

THE COURT: Mr. Bassani has been answered truthfully and you have all you need from him to attack him on his credibility on the weight of the evidance.

MR. KLEIN: Your Honor, on another point and not intending to be presumptuous, or impertinent, I am making this outside the jury's presence, perhaps your Honor doesn't realize this, at this point I would like to move for the

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withdrawal of a juror and the declaration of a mistrial--
I say this most respectfully--

THE COURT: Go ahead.

MR. KLEIN: If your Honor's attempt to make sure the jury understands what this case is all about, your Honor has invaded the witness stand and has become interchangeable with the witness.

Unfortunately, your Honor's instructions, which I have no quarrel with, your Honor's instructions are most illuminating, came while the Government witness Schiffman is on the stand, and what the Government prosecutor couldn't get from Schiffman, your Honor stepped in and made it clear so that the jury gets the impression that your Honor is embracing Mr. Schiffman with your credibility.

It is not your credibility--his credibility is under attack, but how can we attack his credibility when the jurors--

THE COURT: You must give me specific instances or I don't understand a word you are saying.

What did I do that's wrong? Tell me now.

MR. KLEIN: I am saying that your Honor has testified too much in this case.

THE COURT: In what respect? Tell me. Give me one instance where I testified.

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MR. KLEIN: Your Honor said let me explain what an under the table thing is or over the counter.

THE COURT: Under the table I never explained.

MR. KLEIN: Whatever it is.

THE COURT: I explained what an over the counter market is.

MR. KLEIN: Throughout the record--there is nothing wrong with your instructions. I am not complaining about--

THE COURT: Be specific, please. What did I say that you object to. Maybe I will strike it, maybe I will declare a mistrial. Tell me.

MR. KLEIN: I think the entire intervention by the Court into this witness' testimony throughout the record--the whole record, is permeated with instructions by the Court on what this witness means or what--

THE COURT: As far as I know, all I did was to pre-charge the jury on a number of things that I would have put into my main charge and my reason was an obvious one. It is a lay jury involving a securities case. I feel it is my duty to explain to them as we go along just as if the jury raised his hand and said "I don't know what the word so and so means." You explain it to him.

MR. KLEIN: By volunteering it during the course

gwe 11

of a prosecution witness' testimony, the effect on the jury I think is devastating because now, honestly, your Honor, if I could equate what a jury may not know what this case is about, but I know the Judge is explaining what he means to say and it looks like the Judge is on his side.

3b

THE COURT: I did that only in a case where I thought there was obfuscation, and I won't allow that.

MR. KLEIN: That is why I thought, maybe if you are going to do that, wait until the end of the case, so it doesn't come as part of his testimony.

THE COURT: There are two things you are talking about:

One is my questions to witnesses, which I try very hard to be fair about to both sides, and I only elicit things where I think that it hasn't been cleared up sufficiently and it is a simple fact that can be cleared. That I will continue to do.

My charges are pre-charges of what I would normally instruct the jury at the end, and I am going to stick to that.

So you have your exception. I am going to deny your motion.

Anybody else want to make a motion for a mistrial?

All right. Are we ready to bring the jury in?

MR. BRILL: I thought that was unnecessary, Judge, since a motion made on behalf of one invres to the benefit of all. I didn't want to get into this discussion, and although--

THE COURT: The reason I mention it is to help

you gentlemen make a record if there is a conviction. So that if you have something specific, you add to it.

MR. BRILL: Your Honor did ask for some specifics with respect to the matter which Mr. Klein raised, and, frankly, I was unaware of Mr. Klein's intention, I didn't expect the motion to bemade, and I had no idea that your Honor would ask for any specifics.

But it occurs to me that in the course of my recross examination of Mr. Schiffman, when I dealt with specifically those exhibits which were pulled out and marked separately from Exhibit A, Exhibits A-1 to 4 inclusive and B-1, that after I had finished my recross your Honor did ask some questions which I think the jury might have understood to mean that your Honor was straightening out something that supported the testimony of--

THE COURT: It wasn't supporting anybody. It was obviously, I thought, kind of very smart cross on your part in the sense of confusing the jury, so I had to unconfuse them a little bit.

If that is prejudicial, then I stand convicted.

MR. BRILL: It was not my intention to confuse the jury. It was my intention to demonstrate that there was a regular course of conduct on the part of Schiffman and his company, and I thought that I had demonstrated that effectively

by using their own documents.

THE COURT: I couldn't see that.

MR. BRILL: I responded to your Honor's invitation.

THE COURT: All right.

MR. SAGOR: Could I comment briefly, 30 seconds worth? In thinking about the case at the end of yesterday, I was angry with myself for not moving to strike all of Mr. Brill's cross examination. I could not understand it. People who came up to me from the SEC, who were sitting and watching Mr. Brill, told me they could not understand it, and I am sorry I did not move to strike the whole thing. It was the most garbled, misunderstood, and I don't know what is coming with it later for summation.

THE COURT: I had the same impression, which is why I tried to straighten it out a little bit with the jury.

All right. Are we ready to proceed now?

MR. KLEIN: Yes. I think we have Mr. Schiffman.

THE COURT: How can I keep the jury so long? Don't you concede that Schiffman knows your man? He talked to him for such a great length of time.

MR. KLEIN: That's what he said. You are assuming that Schiffman is telling the truth.

MR. SAGOR: Schiffman never saw the photographs.

THE COURT: So there is no taint.

All right. Let the record show that the Government represents that Mr. Schiffman saw no photographs.

THE COURT: All right. I am closing the hearing, then, on identification and we will call the jury in and proceed with the case.

MR. BRILL: Could these be put away, Judge, these exhibits on this hearing? They ought not to be here.

THE COURT: All right. Let the record note that the photographs, in the event they should come back into evidence, are not what we call the police identification or FBI photographs. There is nothing on them except the photograph itself.

MR. MARCUS: Your Honor, I was under the impression that all motions made by any counsel, as Mr. Brill pointed out, will be deemed made by each and ever counsel.

THE COURT: Normally, except a motion for a mistrial, where it relates to a specific individual, certainly should be made by each counsel.

MR. MARCUS: Then, most respectfully, I would join in that in behalf of Mr. Feis.

THE COURT: I understand.

MR. BRILL: I think now the record shows that we have all joined.

THE COURT: Yes, that's right.

MR. BRILL: Thank you, sir.

THE COURT: And I have denied them all, with esceptions.

(Pause.)

THE COURT: I have a note from the foreman of the jury which says:

"January 19, 1974, Your Honor: Yesterday, when you asked the jury if everyone understood what an underwriter was, I thought I was quite clear about it and therefore did not raise my hand.

"However, after re-reading some notes I took and having gotten somewhat bogged down in details, I am becoming increasingly confused on the subject. I therefore respectfully request that you clarify this point either to the jury as a whole or to me personally. Thank you for your attention. Naomi Granville."

THE COURT: Does anybody have any motion, any pleasure about this or anything.

MR. SAGOR: I just think it supports what your Honor has been doing throughout the trial, trying to make this clear to thejury.

THE COURT: I didn't want to comment on it, but it is obvious.

upon to bring to your Honor's attention, would your Honor be good enough to look at pages 753 and 754 of the transcript.

THE COURT: I've read.

What about it?

MR. BRILL: Well, I just thought that--

THE COURT: I knew that's what you are talking about. That's the duty and province of a Federal trial judge, to clarify the record.

MR. BRILL: All right. I thought that that would be part of the specific matter.

THE COURT: I understood what you meant.

MR. BRILL: And I just want to say I have no objection to this jury being told what an underwriter is.

THE COURT: Thank you.

(Pause.)

THE COURT: We are missing one juror. Let's wait until at least 11:30. Why don't we all just recess, but hang around so that when the juror comes, we will be ready to proceed.

MR. KLEIN: This will be our morning recess.

THE COURT: This will be our morning recess.

The note from the jury will be marked as a Court exhibit.

MR. KLEIN: If they ask--

THE COURT: Let's not argue it again. You have your exception.

MR. KLEIN: If a juror asks for it, fine. But you can't suppose, sitting on the bench, that the jury can't understand.

THE COURT: That is what you say. It is not what I say.

MR. KLEIN: If your Honor is going to instruct the jurors that they are the sole judges of the facts and not to invade your province of the law, it goes the other way too.

THE COURT: So what is an underwriter, a fact or a law?

MR. KLEIN: That is fact. She just asked for it.

THE COURT: What is an underwriter is a fact?

MR. KLEIN: Certainly, your Honor.

THE COURT: It is? You go back to your law school, I'll go back to mine.

MR. SAGOR: You might try Section 2.11 of the Section 33 Act.

MR. BRILL: When your Honor gets a chance, . apropos of the matter that I unexpectedly was called

jge 6a

Court's Exhibit 6 marked.)

(recess.)

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(Jury present)

THE COURT: Before we start, ladies and gentlemen, I would like to ask the jurors in the future to try to be here on time because it holds up a good deal of the trial. When one is missing, we can't do anything about it.

I have a note from one of the jurors which asks me to tell about what an underwriter is again. I had asked the other day if everybody remembered and to raise your hand. Nobody raised their hands. But I think it might be useful for me to try to explain it in as non-technical terms as I can so that you can follow it again.

The word underwriter is defined in the law by Congress, but I'm not going to read that to you because that will make it even more confusing, and the status of an underwriter is not really involved in this case. So that what it is is merely something that has to be described so thatyou understand it, and I'll try to do it by an analogy.

For example, if somebody was a manufacturer or a canner of groceries, let's say, of canned peas, obviously the man who makes the peas can't go running all around the country to sell them. So what he generally does is he

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sells them to a wholesale house. That wholesale house buys a lot of these cans of peas and then the wholesale house goes around to the grocery store and sells the pieas to the grocery store and the grocery store sells it to you and me when we come in to buy a can of peas.

Now, the company, Cadgie Taylor, is like the manufacturer of the peas. It wants to issue stock which it wants to sell. It can't go running all around the country selling stock. It has no facilities for it. It is not geared for that. So they go to find the wholesaler. The wholesaler is the underwriter. The underwriter is the man, or a house generally, a brokerage house, that is the banking house, that has connections with various dealers in securities. And what it does is, it enters into some agreement to sell the stock, gets the dealers together and allots to them a certain amount each one says they will sell, and in that way the whole issue is sold to the public.

Now, there are two kinds of underwriters, generally speaking. One is an underwriter who commits himself to what is called a firm underwriting, firm in the sense of not soft; it is a hard underwriting, which means that he undertakes to sell the stock for the company, and if he shouldn't succeed in selling all of

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it he'll buy the rest or he'll guarantee it that he will sell it. That is a firm underwriting, which is not involved in this case at all, at all.

Now, what we have in this case is the second type of underwriting, which is called a best efforts underwriting. A best efforts underwriting is where the underwriter merely says that I will use my best efforts to sell all the stock, but if I don't succeed in selling all of the stock I'm not going to pick it up. What is going to happen is, we are going to give everybody their money back because we didn't sell the whole issue. See?

Now that's what this was. It is called a best efforts underwriting on an all or none basis. Either you sell all the stock or you sell none of it.

And the reason for that is, as I think I indicated, that obviously, if I put $100 into buy a stock, I know that that $100 is going to go into the company together with all the other $100s that is put in to make a total in this case of $250,000 less the expenses and less the underwriting fees and so on.

But suppose you only sold $10,000 and I put up my $100. Well, I may not think that that company is going to be a very good company because it may lack capital. It doesn't have what it says they are going to sell. And so the law is, the rule is, that you give

the money back. And that's the kind of case we are talking about here, where if they had not succeeded in selling, they had to give their money back.

Now, you'll find there will be a sharp conflict between the government and the defendants about this 120-day business, and I'm going to reserve on that until my final charge. But basically all I can tell you is that the government contends that the money should have been given back that was collected by November the 5th, October 5th, which was the end of the 120 days, and the defendants say no.

Now we'll hear about that as we go along. Keep an open mind about all that. I hope that answers your general question. Think of the underwriterr as a wholesaleer and then you've got the whole idea of the picture.

All right.

You may proceed.

MR. SAGOR: The government calls Dominic Bassani.

D O M I N I C B A S S A N I , called as a witness by the government, being first duly sworn, testified as follows:

* * *

Q Now first with respect to dilution, would you explain to the members of the jurywhat that is?

THE COURT: It is not necessary.

MR. BRILL: No, sir. I object to it.

THE COURT: Explain it.

MR. BRILL: I thought your Honor sustained the objection.

THE COURT: No. I'm overruling it.

MR. BRILL: I beg your Honor's pardon. I misunderstood you.

A How much of the stock or what percentage of the company does the public get for its money? In this particular circumstance the public was getting a little bit less than 24 per cent of the stock of the company --

Q Roughly a quarter of the stock of the company for a quarter of a million dollars, is that right?

A Yes.

MR. BRILL: Now, your Honor, I think we had better go to the robing room.

THE COURT: All right.

(In the robing room)

MR. BRILL: Your Honor, I respectfully move for the withdrawal of a juror and the declaration of

a mistrial on the ground that the testimony being elicited now and being developed and sought to be elicited is inflammatory, unduly prejudicial and without probative value. There is nothing in this testimony as it is emanating from this witness that demonstrates that there is any falsity in this prospectus.

What he is doing now is characterizing the disclosures made in the prospectus as to the risk and speculative nature of the offering and doing it in such a manner as to generate an atmosphere in the courtroom that there was something rotten here, and none of it is false, it is all disclosed, it is contained in Exhibit 1, which is in evidence, and certainly is an unfair way to do it.

THE COURT: No. It gives you a beautiful field for cross-examination, which I think I will allow you, as much as you want to go.

I thought you were going to raise another problem that is troubling me a little bit, and that is it is offered really to show the intent of this witness, that he is doing it only for the 40,000, that he thought so little of the stock. And I thought you were going to ask me to instruct the jury to say that although he may have thought so, that doesn't necessarily mean the defendants did. That I was going to do on my own in a few

minutes.

But otherwise your objection is not well tkaen, in my opinion. But that's always a risk in these cases. You do one thing at a time.

MR. BRILL: I appreciate your Honor's view that this offers an opportunity for extensive cross-examination in view of the disclosures in this prospectus with respect to these matters, but --

THE COURT: I'll tell you why I say that. Because on the issues as framed here, as I see it, I would normally not have allowed you to demonstrate the truth of the statements in the prospectus, which are there because there is no claim that they are false. But once the government has examined the witness in that respect, I am going to give you fair leeway in cross-examination.

So I think the net result is you will have gained by the exchange. I'm ruling that way.

MR. BRILL: Your Honor has denied my motion?

THE COURT: Absolutely.

MR. BRILL: And I respectfully except.

THE COURT: Surely.

MR. KLEIN: Is your Honor going to give an

instruction to the jury without us asking for it?

THE COURT: I am going to give it at a proper time. I'll see when it is. I'll give them some instructions.

(In open court)

THE COURT: All right, Mr. Sagor. You may proceed.

BY MR. SAGOR:

Q Mr. Bassani, you were telling us the public put up approximately a quarter of a million dollars and they get a little less than 25 per cent, a piece of ownership in the company, is that right?

A That's correct. That's part of it in determining dilution, yes.

Q And the founders of the company and the promoters, they put up how much money?

MR. BRILL: Excuse me. I object to this, if your Honor please.

THE COURT: All right. It is all in the prospectus, ladies and gentlemen, so it is merely a repetition of the prospectus. That's why I'm allowing it. This part was all disclosed to the public, obviously.

Q And the founders put up how much money?

A It says here $42,019.

MR. BRILL: He is reading from the prospectus, Judge. That is not testimony or evidence of anything.

THE COURT: All right. Let me explain to you why I am allowing this testimony. It is in the prospectus anyhow, which you are going to read, and it is not being offered, at least I won't allow it, to prove that the statements in the prospectus are false. That's not the purpose.

The purpose of it is to allow the witness to state and testify, as he has, that he thought it was a crooked deal in a sense, that he thought he was doing something wrong, that he thought that it was worthless stock.

Now I want to caution you. That doesn't bind any defendant in this case what he thought. You are going to have to determine what the defendants thought and what each defendant separately thought, treating each case on its own as to what each defendant throught aboutthe stock. And with that, that is the reason I'm letting it in. He is saying that except for the $40,000 he wouldn't have done it.

All right, go ahead.

BY MR. SAGOR:

Q Now, the founders of the company and the originators, they paid approximately $42,000, is that correct?

MR. KLEIN: That is objected to because it is not within his knowledge.

A It is right here in the prospectus.

THE COURT: I think technically --

MR. KLEIN: That is not the question.

THE COURT: Technically you are right. All he can say is that's what he knows from the prospectus, I suppose.

MR. SAGOR: That's right.

Q Does the prospectus say and were you aware of it at that time that you were recommending stock to customers --

MR. KLEIN: Your Honor, the other day you stopped me from doing this, from going into what the prospectus says.

THE COURT: Don't tell me what I did to you the other day. I didn't do anything to you. So please sit down.

Q Mr. Bassani, $42,000, did you say?

A $42,019.

Q And how much, what piece of the action, so to speak for $42,000, did the founders get of the company?

THE COURT: I think you've gone enough into this. It is a matter for summation. It is arithmetic.

MR. SAGOR: If there weren't so many interruptions, we would be finished with this in two minutes.

MR. BRILL: Two minutes would be completely wasted, Judge, even if it only took two minutes, because it is pretty clear as to what the purpose is.

THE COURT: That's enough.

Go to another subject.

MR. SAGOR: I would like to. Let him answer.

THE COURT: It is just an arithmetical computation, which you can do in your summation.

All right. Don't answer the question.

Go ahead.

MR. SAGOR: All right, your Honor.

Q What was the book value of the company?

MR. BRILL: Again, your Honor, we are in the same area. He is merely reading from the prospectus.

THE COURT: It is only for a very limited purpose, as to what Mr. Bassani thought, and this is not

binding on what others may have thought.

MR. BRILL: Thank you.

Q Mr. Bassani, what was the book value of the company?

A At the completion of the offering, the book value --

Q No, prior to the completion of the offering, prior to the public investing money in the company.

A The tangible book value of the company was negative.

MR. BRILL: That is a characterization that is Mr. Sagor's, not his.

THE COURT: He said negative.

MR. BRILL: After he did.

THE COURT: No. He said it first.

MR. BRILL: I didn't hear it.

MR. SAGOR: You are standing up too much.

MR. BRILL: I have to. I need the exercise.

Q Would you explain to the members of the jury what negative book value is?

MR. BRILL: I object to that, if your Honor please. This is an intelligent jury. It knows what negative means.

THE COURT: Oh, come on.

MR. BRILL: Yes, sir.

THE COURT: You can be very intelligent and not know what negative book value means. I'm not sure I understand it myself.

MR. SAGOR: Can you ask the members of the jury if they know.

THE COURT: No. And don't interfere with my conduct of the jury.

Can you state in simple enough terms for laymen to understand what negative book value is? First you have to know what value is, then what book is, then what book value is and then negative book value. Do you know all those things? You explain.

THE WITNESS: I won't put myself out to be an expert, Judge.

THE COURT: Next question.

Q Is the company worth less than a penny a share?

MR. BRILL: That is objected to.

THE COURT: That is a big speculative question.

MR. SAGOR: I am sorry, your Honor. In terms of book value. That's all I want to know.

THE COURT: Nobody knows what book value is.

MR. SAGOR: Could your Honor instruct the jury on what book value is?

THE COURT: I don't see the relevancy of it.

You said that you thought that the stock was worthless, is that right? Not worthless but that it had some difficulties or something. And one of the elements in your thinking was that it had no book value, is that right?

THE WITNESS: It went far beyond book value.

THE COURT: It went far beyond book value. Your thinking went far beyond book value.

THE WITNESS: In evaluating the company, yes.

THE COURT: The difficulty is we get into some very involved accounting things here because book value normally, as the courts have said, is meaningless. It merely means the value that is shown on the books, which don't mean true value at all. And therefore I think you are just confusing the issue by pushing it, Mr. Sagor.

MR. SAGOR: All right. I will just do it one other way and move on to other issues.

Q Could you tell us how much, looking at the prospectus, how much did Cadgie Taylor owe to Sierra

Silver?

A It says here $60,381.

Q And how much did Cadgie Taylor have in the bank in cash?

A There is no statement here.

Q Turn to the latter pages.

A As of February 28, 1970 they had current assets cash $1431.

Q All right. Now let's move on.

Now, would you explain to the members of the jury how stock is stold?

A Well, stock is sold --

MR. BRILL: I think that is a broad --

THE WITNESS: -- in many ways --

THE COURT: If he can answer, let him try. If it's no good, we'll strike it out.

MR. BRILL: All right.

THE COURT: It can't be prejudicial.

How is stock sold?

THE WITNESS: Stock is sold in many ways. It is sold based on reports --

Q You have to put your hands on the table.

A It is sold based on reports by analysts in some cases, it is sold by personal contact between

registered representatives.

Q I meant the mechanics of it. Do you call up on the telephone the customer and then what happens? That's all I'm getting at.

A In my own instance, yes, I would always call the customer on the telephone.

Q And when the customer gave an indication of interest in the stock, what if anything did you do with respect to theconfirmation?

A Well, if the customer said that he was going to purchase the stock, I would then buy it for him and send out a confirmation.

THE COURT: Let's limit ourselves to new issues, Mr. Sagor, or we'll be very confused.

Q New issues only?

A New issues? If a customer said he was going to purchase so many shares of a new issue, we would send him a confirmation and he would either send us a check or he would instruct us to sell something else in his account to pay for it and then we would take the proceeds out of his account, if he had an account for us.

THE COURT: When you say you sent out a confirmation, did you send anything else with it?

A We sent the prospectus with the new issue.

Q And the prospectus that you sent out to customers in October 1970, did that indicate in any place that there was a promise of a $40,000 compensation in cash?

MR. BRILL: The prospectus speaks for itself. It is in evidence. Your Honor has said so several times.

THE COURT: Yes, that's true.

MR. SAGOR: May we note that there is a complete absence of any --

MR. BRILL: I object to this statement. It is unwarranted and unnecessary and improper and I ask your Honor to instruct the jury to disregard it.

THE COURT: No. I think what we'll do is we'll assume the fact, as Mr. Brill states it, that it does not appear in the prospectus since there seems to be no argument about that by anybody in the courtroom, and the question is, was any suggestion made by anybody to amend the prospectus so as to put it in.

THE WITNESS: No. That suggestion was not made and it could not be put in the prospectus. There was no -- there was no way to put it in.

BY MR. SAGOR:

Q Mrs. Bassani, did there come a time in the

* * *

BY MR. SAGOR:

O Do you know whether or not, by the way, Memme & Company ever bought shares from Cadgie Taylor on the market?

MR. BRILL: How would he know that?

THE COURT: That is not the best evidence, no. All right. Sustained.

MR. BRILL: He shakes his head negatively anyway.

MR. SAGOR: Mr. Brill wants to testify that Mr. Bassani shook his head.

MR. SAGOR: Your Honor, may I have a minute?

THE COURT: Yes.

(pause.)

O Mr. Bassani, I want to direct your attention to on or about November 5, 1970. Do you remember there came a time that Kelly, Andrews & Bradley received its commissions for the sales of approximately 100,000 shares? Do you remember that?

A Yes.

O And did there come a time on that day or in that period of time that you saw some money?

A Yes.

THE COURT: You had better be more specific than that. When you say "commission," are you talking

about the 10 cents a share? What are you talking about?

MR. SAGOR: The 10 cents a share, your Honor.

THE COURT: Call it that, so we understand what you are talking about.

O The 10 cents a share commission, the $10,000, the amount of commission stated in the prospectus. Did there come a time that you received that?

MR. BRILL: No, no. Excuse me. I have to object to that question, your Honor, because it is confusing. The prospectus says what it says. He is talking about something else.

THE COURT: All right. Strike out about the prospectus.

Did you get 10 cents a share for selling 100,000 shares?

A Yes.

THE COURT: All right. $10,000. Next.

O Did there come a time when you saw cash?

A Yes.

O And when was that?

A That was, I believe, the same day we got the commission check.

O And would you tell us what happened?

A Well, I was in the office, and Alex Poland came

* * *

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subsequently get paid.

Q Mr. Bassani, I want to completely go off this area and go into something else. Mr. Bassani, have you committed crimes for which you have not been prosecuted?

A Yes.

Q Have you committed crimes when you were at Kordich, Victor & Company?

A Yes.

Q And what did you do at Kordich, Victor Company?

A I was a trader. I handled the firm trading account and I handled all the customer tickets at the firm. I executed all orders, plus I had my own clients.

Q And what wrongdoing did you do there?

A On a new issue, a registered representative or an employee of the brokerage firm in any way is not supposed to take any of the new issue stock at the offering price. If you want it, you are supposed to buy it in the after market.

In at least five instances while I was at Kordich, Victor, I bought stock on the new issue price in nominee accounts for myself while I was at the firm.

Q And what are those issues, so the record is clear?

MR. BRILL: I don't think that makes any

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difference.

THE COURT: It is not very important.

MR. SAGOR: Okay. Fine.

MR. MARCUS: Your Honor, would you explain nominee accounts to the jury?

THE COURT: No. I'll ask him what he means. What is a nominee account?

THE WITNESS: I would buy the stock in the name of another individual, but thestock was mine and all the profits or losses were mine, and I would pay for it.

THE COURT: And you did it deliberately because, if you showed your own name, you would be openly violating the law?

THE WITNESS: That is correct.

THE COURT: All right.

BY MR. SAGOR:

Q When you were at Kelly, Andrews & Bradley, did you commit any violations which you have not been indicted for?

A Yes.

Q What were they?

A Electrogasdynamics would be one.

Q What did you do there?

A In December of 1970, Kelly, Andrews & Bradley

* * *

$40,000. None of it, not one penny, went in my pocket.

O Did you ever commit a crime?

A Yes, I did.

O And did your conscience bother you when you were committing the crime?

A I would say at times, yes.

O But not enough to deter you from it?

A I would agree with you, yes .

O And did that crime that you committed result in financial benefit to you?

A Sometimes benefit, sometimes ruin.

O But you intended to have it benefit you when you committed it? You went for the profit, for the buck?

A At times, yes, at times no.

O And so when weighed on the scales with a dollar on one side of the scale and your conscience on the other, the dollar won out, is that right?

A That's not true.

O Don't you want Judge Gurfein, who is going to be your sentencing judge, to be satisfied that you were living up to your agreement with the prosecution?

THE COURT: I don't understand that. What have I got to do with the prosecution?

MR. KLEIN: You have nothing to do with it.

It is the state of mind of the witness.

THE COURT: You are putting the state of mind in a very peculiar way.

MR. KLEIN: I will withdraw the question.

THE COURT: You had better because I might ask a question and that might not be good.

Q Do you want to go to prison?

A No, I do not want to go to prison.

Q Would you lie to keep from going to prison?

A No.

Q Aren't you interested in numero uno?

MR. SAGOR: Is that Spanish, your Honor?

THE COURT: Numero Uno is Latin, I understand. It means number one, like Hertz against Avis.

Q Aren't you?

A Am I interested in what, sir?

Q In yourself, number one?

A I am intersted in myself, yes.

Q Isn't it correct to say you have a stake in the outcome of this case?

A No.

Q Don't you feel that if there is a conviction here that your chances of going free are much better?

A No.

Q Isn't it the purpose of the agreement to keep you from going to prison?

A No.

Q Did either the prosecution or your attorney tell you that although no formal promise had been made that you would probably not go to prison or that if you did it would be for a very short term?

A After reviewing my situation with my attorney, going back to Korditch, Victor & Newfeld all the way through Kelly, Andrews & Bradley, there were many areas of technical stock violations and crimes regarding securities that were involved and this was the basis for going in and reaching this agreement and none other. Strictly on that basis. that there were a number of these violations, crimes as they were called, all related to securities. Okay. And we reached this agreement, period. There was no understanding about whether or not I am going to go to prison, I am not going to go to prison, how serious this crime was versus that crime or anything else.

Q But your hope is not to go to prison?

A Yes.

Q By the way, you did commit crimes before you came to Kelly, Andrews & Bradley, didn't you?

A That is correct.

Q Were you admonished by this judge not to discuss anything with Schiffman the other day?

A I was admonished -- no. I was asked by the judge not to discuss the case with anybody, not Schiffman, the United States Attorney's office, no one.

Q Didn't the judge say specifically Schiffman?

A Yes, he said specifically Schiffman and the United States Attorney's office.

Q Discuss anything with Schiffman?

A No, he said the case.

THE COURT: Since I am involved in this, I am not going to allow you to play on my words.

MR. KLEIN: I am going to read it.

THE COURT: You don't have to read them.

MR. KLEIN: I will read the exact words. I don't play on them.

THE COURT: I won't let you do that.

MR. KLEIN: I am not playing with your words. I am going to read them. If that is considered playing, it is in the wrong league.

THE COURT: Playing means whether it is anything about this case or whether it means it is raining outside or something like that.

Q After the judge told you that, did you thereafter

speak to Schiffman after he left the witness stand and before you testified in this case?

A That was after I started to testify in this case.

Q You spoke to Schiffman?

A Yes, I did.

Q Even after the judge had advised you not to?

A No.

MR. SAGOR: Your Honor, you just told him not to do it.

THE COURT: The direction was not to talk in sense of not discussing the case. It is perfectly proper for Mr. Klein to examine whether in the conversation that he had with Mr. Schiffman he did discuss the case. That is perfectly proper cross examination, but not the day Mr. Klein puts it, whether he spoke to him. If he had said hello, good morning or something or discussed some other matter that will be a different story.

Q In your discussion with Mr. Schiffman, did you discuss the case or your testimony or his testimony?

A No.

Q Is there a pending real estate deal between you and Mr. Schiffman at this very moment?

A Not between myself and Mr. Schiffman, no.

* * *

Q Both you and Mr. Schiffman are on the same side of this venture?

A Both Mr. Schiffman and I stand to benefit from it.

Q Are you friendly with Mr. Schiffman?

A Very.

Q You have been friendly all along, is that right, with him?

A No. We had a falling out.

Q But that has been straightened out?

A I would say yes.

Q And you are friendly now?

A Yes.

Q And before you joined Kelly, Andrews and Bradley, was Mr. Schiffman responsible for making a lot of money on some deal?

A Before I joined Kelly, Andrews and Bradley?

Q Yes. Is it correct to say that you would not knowingly contradict Schiffman's testimony for two reasons, (a) friendship, and (b) breach of your agreement with the prosecution?

A Mr. Schiffman's testimony has no bearing at all on my testimony. He was much more intimately involved in all of these things than I was.

Q During the year 1970, did you have earnings other than earned income?

A I don't see how a person could have earnings other than earned income. Okay?

THE COURT: Did you have any income other than earned income?

THE WITNESS: Then he is asking me if I filed a false tax report for 1970 and I didn't file a tax report for 1970, so any income I had is earned.

THE COURT: Did you have interest, dividends? I suppose that is what he means.

A Is that what you are referring to?

Q Yes. Did you?

A I don't know. I don't think so. But I may have.

Q Did you testifify that Kelly, Andrews and Bradley sent Feis an all-sold telegram?

A Yes.

Q What date was that, October 1st or October 5, 1970?

THE COURT: It is an exhibit, isn't it?

A I think it was sent the 5th.

Q Did you then also testify that by reason of such telegram that Kelly, Andrews and Bradley then became

the owner thereof technically, owner of the stock technically?

A Technically, yes.

Q And was the stock paid for at that time?

A Oh, no.

Q I mean did Kelly, Andrews and Bradley pay Feis at that time?

A No. The only reason --

Q Did they pay them?

MR. SAGOR: Could he finish?

MR. KLEIN: I didn't ask for anything further.

THE COURT: Let him finish. This could be very misleading if he didn't finish the answer. Go ahead.

A The only reason for the telegram was because the offering expired on October 5th. The 120 days were up so they had to be able to show thatthis underwriting had been sold. Otherwise the deal expired and they had to go back to the SEC and refile and go through the expense and time all over again.

Q If payment had been made simultaneously with the telegram, would you say that actually Kelly, Andrews and Bradley would be the owner of the issue?

A If we had paid for the stock on October 5th?

Q Yes.

A We would have owned the stock.

Q And the reason you say that you were only technical owners of the stock was because you just had the naked telegram all sold but it wasn't backed up by thepayment of the purchase price, is that correct?

MR. SAGOR: I will object, your Honor. There has been no such testimony. Further, I ask the jury be charged that any agreement which is in contravention of law in no wise can be binding.

THE COURT: I don't want to charge now. I will allow the answer to the question at the moment and see what happens.

THE WITNESS: Would you repeat the question, please.

(Question read)

A I would say that payment was not -- we were technical owners of the stock, payment was not given that day nor was it expected on October 5th. Okay?

Q If payment had been made on that date then wouldn't the subsequnt sales made during the month of October by Kelly, Andrews and Bradley to its customers be actually resales of stock owned by Kelly, Andrews and

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Bradley?

MR. SAGOR: I will object to any hypothetical.

THE COURT: Sustained. It is hypothetical. It didn't happen.

MR. KLEIN: Your Honor, may we approach the side bar?

THE COURT: Yes.

(At the side bar)

MR. KLEIN: Your Honor, you just said it didn't happen. That is our contention.

THE COURT: What?

MR. KLEIN: You said it didn't happen. Our contention is that Kelly, Andrews and Bradley bought the whole issue from Feis.

THE COURT: It didn't happen with the payment of the money on October 5th. That's all I said didn't happen, which you yourself said.

MR. KLEIN: I misunderstood.

THE COURT: Therefore I said it is hypothetical. You said "If you paid."

MR. KLEIN: I misunderstood what your Honor meant.

(In open court)

Q Did Feis start coming in or calling up every day from on or about October 5th?

A Previous to that he was coming in, but I don't think it was on an everyday basis. At least I didn't see him on an everyday basis.

Q Did there come a time you saw him on an every-day basis?

A Just about.

Q Just about what?

A Right after this October 5th time until the time we closed.

Q Didhe ask you or did he ask any of your partners in your presence for payment of the $200,000 for the purchase of the issue of Cadgie Taylor pursuant to the telegram?

MR. SAGOR: There has been no showing this telegram represented a sale.

THE COURT: You will get an answer from the witness and then you can ask about it on redirect. It has been opened up now.

A What is the question.

Q The question is during these almost daily visits by Mr. Feis in person or by telephone to the office of Kelly, Andrew and Bradley on and after October 5th,

did he ask you or did he ask anybody, any of your partners, in your presence for payment of the sum of $200,000 representing the purchase price of 100,000 shares of Cadgie Taylor pursuant to the all-sold telegram?

MR. SAGOR: Your Honor, I just object to the double question. It assumes a lot. You have to take it in pieces even if you give a question or no answer, particularly a no answer to what you are saying no to.

THE COURT: That's right, break it up.

Q During the perios from October 5th through the rest of October, did Mr. Feis dun you or your partners for money for the sale of stock, Cadgie stock?

A Did Mr. Feis --

Q Dun, did he ask you for money?

A He came in, he would ask how we were going with the stock, you know, were we selling it, was money coming in.

Q Did he ask for money?

A I would say yes, he did.

Q Did he get money?

A We paid him as we got money in. We didn't have $200,000 to give him.

THE COURT: The question was, as I understand it, did he ever ask you for $200,000 as a flat sum because

you had sent him a telegram in which you purported to be the owner of the stock. That is the question. Did he ever ask you for that?

THE WITNESS: You mean based on the fact --

THE COURT: Based on the telegram.

THE WITNESS: Based on the telegram.

I believe that came up once and only once.

Q During the period after October 5th?

A Yes.

Q Wasn't there a meeting at your office on October 1st, the day of the Jewish holiday?

A Approximately, yes.

Q And you were closed for business that day, right?

A Yes.

Q And Miller wasn't present at that meeting, was he?

A No.

Q Isn't it the reason that you came together to the office that day was because Mr. Feis thought there was a closing and he expected to be paid his $200,000?

A Mr. Feis thought there was going to be a closing that day, as far as I know, yes.

Q And did Mr. Schiffman say -- put the blame --

* * *

AFTERNOON SESSION
2:30 p.m.

(Jury present)

D O M I N I C B A S S A N I resumed.

MR. SAGOR: May we proceed?

THE COURT: All right, Mr. Sagor. You may go ahead.

REDIRECT EXAMINATION (CONTINUED)

BY MR. SAGOR:

Q Mr. Bassani, do you remember on Friday testifying in this case about the all sold telegram?

A Yes.

Q And do you remember saying withrespect to Government's Exhibit 9 that what that meant was "We were now putting ourselves in a position where technically we were buying the stock of K and technically the issue was sold." Do you remember that?

A I believe so, yes.

Q Would you tell the jury what you meant when you said with respect to Government's Exhibit 9, the telegram, that "Technically we were buying the stock"?

MR. KLEIN: Objected to, your Honor.

THE COURT: Overruled.

A When I meant we were buying the stock, it

wasn't Kelly, Andrews and Bradley was buying it. The all sold in this instance relates to customers. It doesn't relate to the firm itself. If you are in a firm deal --

Q Wait a second. Let's not get hypothetical.

A Okay.

MR. BRILL: I submit now he has asked for it, there has been an objection, it has been overruled, we should have the whole answer, your Honor.

MR. SAGOR: I'm willing to.

THE COURT: He can answer it.

Finish your answer.

Q Was this a firm deal?

A No, it wasn't.

MR. BRILL: That's not --

THE COURT: Let me explain. There are two different meanings of "firm," obviously. A firm is a concern like a partnership or a corporation. That is called a firm. Firm also means as distinguished from soft. So you have have a firm underwriting, where the underwriter undertakes to pick up the balance of the stock that isn't sold.

In what sense the witness is using "firm" I don't know, but I'm just cautioning you about that

difference.

Q All right, Mr. Bassani. Did you hear what the judge said?

A Yes, I did.

Q Please make clear, when you use the word "firm," what you are referring to, if you want to use the word "firm."

THE COURT: If you want to, say it is a KA&B deal or a Kelly, Andrews and Bradley deal, if you mean that. And when you mean a firm underwriting, use the word "firm;" or a firm purchase, use the word "firm."

Q Let's go back. And would you explain to the jury, as I asked you, what you meant when you said "We were now putting ourselves in a position where technically we were buying the stock"? What did you mean when you said that?

A In this underwriting we weren't buying the stock for ourselves. The purchase that was being made was on behalf of customers. There was no purchase planned or predicated for Kelly, Andrews and Bradley as a firm. The purchase was planned for customer accounts.

THE COURT: What would happen if you couldn't sell it?

THE WITNESS: This was a best efforts deal, and --

THE COURT: No. I mean, after the telegram, what would happen to you if you couldn't sell the stock?

THE WITNESS: I don't think --

THE COURT: Was that discussed?

THE WITNESS: I don't think we would have any liability -- I'm not positive, but I don't believe so -- because of the nature of the deal. It is a best efforts underwriting.

MR. KLEIN: I move to strike that out as being a conclusion and a legal opinion.

THE COURT: Yes, strike that out.

MR. SAGOR: Your Honor, counsel asked for those --

THE COURT: I asked it. Strike it out.

BY MR. SAGOR:

Q Now, Mr. Bassani, did you understand that after October 4, 1970 any sales of Cadgie Taylor stock would be illegal?

A I believe the issue expired October 5th, yes.

MR. BRILL: I object to it.

THE COURT: I overrule the objection.

A (Continuing) After October 5th the issue expired, I believe. The date of October 5th was it. After that it was --

THE COURT: What would have happened if it expired, according to the prospectus?

THE WITNESS: Well, the underwriting would have ceased, there would have been no more sales and there would have been no more underwriting. If they wanted to go ahead and try to sell the stock --

THE COURT: What would happen to the money?

THE WITNESS: It would have to be refunded, whatever money had come in.

Q And did you know that the money hadn't been refunded as of October 4, 1970?

A If the underwriting was not sold, it would have to be refunded, yes.

Q And was the underwriting sold as of October 4, 1970?

A No.

Q Had Kelly, Andrews and Bradley in fact, in any shape, manner or form, purchased the 100,000 shares of Cadgie Taylor stock?

MR. BRILL: Objected to.

MR. KLEIN: Objected to. The best efforts

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dilution, do you remember that?

A Yes.

Q And there is nothing illegal about dilution, is that correct?

A No.

Q Can you tell us what the amount of dilution was here?

A I believe --

MR. KLEIN: What difference does it make? It is part of Exhibit 1.

THE COURT: He already testified to that on direct.

MR. SAGOR: I am not asking him to read it. I have a different answer in mind.

A You don't want the exact?

Q No.

A The public got less than 25 per cent of the company for their money.

Q Did you understand this to be a high rate of dilution as opposed to a low rate?

MR. KLEIN: Objection.

THE COURT: Sustained. I won't allow it.

Q You were asked to note the fact that in the prospectus the proceeds to the company at one stage were

approximately $215,000, do you remember that? I will show it to you, if you don't.

A Net proceeds.

Q Not exactly. At one stage before other deductions are made it is $215,000. Is it before you?

A Yes. I believe it'slower. The net proceeds to the company if the issue was sold would aggregate approximately $200,500.

Q And what happened to that $200,000? Did that all go to Cadgie Taylor?

A Well, it all goes to Cadgie Taylor and then you would have 60,000 goes back to Sierra Silver to repay the advance.

Q So how much net went to Cadgie Taylor?

MR. KLEIN: Your Honor, that is net. They are paying off an obligation.

THE COURT: I know. Go ahead.

Q How much cash went to Cadgie Taylor, approximately $142,000?

MR. KLEIN: Your Honor, that is not dilution. Right on the face of the prospectus it says they had an obligation of $60,000 to pay the parent company.

THE COURT: It says in the prospectus you are going to pay back the $60,381 to Sierra Silver

Mining Company. So it wasn't concealed in any way. What this witness is being asked is in view of that and other facts he believed that it was a worthless stock. That is what the whole point is.

Q In view of that as well as the other things that Mr. Klein pointed to in the prospectus this morning about dilution, about ownership of the shares, did you believe it was a worthless stock.

MR. BRILL: That is objected to as being immaterial, irrelevant and not a matter with which this jury need be concerned.

THE COURT: No, I will allow it andthen I will explain it.

A In my opinion, yes.

THE COURT: Now, the only reason I am letting that in is that it shows the motive of this witness in trying to sell the stock to his customers, that is, the Kelly, Andrews and Bradley people. The government's claim, and of course the defendants don't agree to this at all, is tht Kelly, Andrews and Bradley would not have sold the Cadgie Taylor stock at all to their customers and friends unless they got $40,000 under the table.

MR. SAGOR: We are almost finished, your Honor.

Q Do you remember Mr. Klein also asking you did you notice there is a distinction between if you lease the property or if you own the property outright?

A Yes.

Q And did you know what these people paid for the property?

A I believe approximately $13,000.

MR. KLEIN: Your Honor, this prospectus speaks for itself. Your Honor required me to be very specific in certain instances. I think we have gone into it. I was specific.

THE COURT: It's obviously a matter that both of you have gone into by reading the prospectus in the guise of a question, in effect, reading it to the jury, which youare allowed to do. It is inevidence. I suggest to Mr. Sagor the same thing. I would have suggested to you the same thing except I didn't want to interrupt your cross. You can read and point out to the jury anything in the prospectus. I don't need this witness to tell you. Whether it is true or not, it is there.

I suggest you do that in summation, instead of asking him questions.

MR. SAGOR: We are finished. My question is

based upon things he noted in the prospectus as well as read in the prospectus. There is a two-fold purpose.

THE COURT: We have had enough of that.

BY MR. SAGOR:

Q Now, in answer to, I think, Mr. Marcus or Mr. Klein, did you indicate that the price of silver had gone up tremendously?

A Yes, in the last couple of years.

* * *

signatures compared. He says it is a duplicate.

MR. KLEIN: It is assuming that.

MR. SAGOR: If you make a stink of it I will ask him to go back to Washington and come back here.

THE COURT: He was asked if it is a duplicate original. He is a records officer.

MR. BRILL: He means it is a photostat.

MR. SAGOR: This is submitted by the individual.

THE COURT: What you should do in these cases is instead of an official document, you say an original document andhow many copies were filed and is this one of the copies.

MR. SAGOR: I will ask him.

(In open court)

BY MR. SAGOR:

Q Mr. Wilson, can you identify Exhibit 31, physically what I have in my hand, as one of the copies filed by the company?

A Yes, that is correct.

Q In other words, the SEC doesn't make this up, this is actually filed by the company?

A Yes. We require eight copies, and that is

one of the copies filed.

Q One of the eight copies that is filed by the individual?

A Yes.

MR. SAGOR: 31 for identification is offered.

THE COURT: Received.

(Government's Exhibit 31 was received in evidence)

THE COURT: Let me say this: On a document like this which is in March of '71, which is quite sometime after the stock had been sold to the public, there are certain things in there which the government claims are admissions by Mr. Ridland, that is, admissions of something, I don't know what, wrongdoing of some kind, which, of course, he denies. However, I am admitting it in evidence only against Mr. Ridland and it is not binding at all on Mr. Feis or Mr. Steel. They apparently never saw it.

MR. SAGOR: Reading from Government's Exhibit 31 in evidence, it is dated on page 4 February 22, 1971, and it bears the following paragraph at the bottom:

"Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Annual REport to be signed on its behalf by the undersigned

* * *

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Q Now, sir, can you tell us whether or not, in connection with the Cadqie Taylor offering, an amount of $40,000 in additional compensation could have been stated in the prospectus of Cadqie Taylor?

MR. KLEIN: Your Honor, objected to.

THE COURT: No, no, no. The question is, first, was it stated? I think you had better develop what that is so we can follow it logically. You know and I know, maybe, but let's make it simple.

Q Are you familiar, sir, with the prospectus of Cadqie Taylor?

A Yes, I am.

Q And can you tell us whether or not an amount of $40,000 was stated in the prospectus as compensation for Kelly, Andrews & Bradley?

MR. KLEIN: That is objected to. The document is in evidence and it speaks for itself.

THE COURT: Overruled.

MR. KLEIN: Exception.

A There is no disclosure, nor am I aware of any $40,000 fee.

Q Now, sir, what was the selling commission or selling concession, rather, that Kelly, Andrews & Bradley was allowed?

A According to the terms that are disclosed in the prospectus, they would have been allowed ten cents per share on each share that they would have sold.

Q And if they sold a hundred thousand shares, what was their commission?

A Their money commission would have been $10,000.

Q Based upon the prospectus that was filed in connection with the NASD in connection with Cadgie Taylor, could the underwriter, Feis Securities, have indicated an additional compensation to Kelly, Andrews & Bradley of $40,000?

MR. KLEIN: Objected to, your Honor, as speculative.

THE COURT: Overruled.

A They could not have -- excuse me. Could I ask for a repeat of the question again?

Q Yes. Could $40,000 have been included as additionalal compensation by Feis Securities?

A It could have been included as additional compensation, but it would also have been deemed to have been excessive and unfair.

Q And if it was deemed to be excessive and unfair, what effect, if any, would that have on the SEC enabling that security to be sold to the public?

MR. MARCUS: Objection, your Honor. It begins with an "if." It is highly speculative.

THE COURT: Overruled.

A The SEC would have contacted the NASD and denied the acceleration or effectiveness of the offering.

Q And would not permit that issue to be sold to the public, is that correct?

A That is correct.

Q In connection with your testimony here, pursuant to the request of the Government did you bring with you certain price quotations of Caddie Taylor stock?

A Yes, I did.

Q And these are the socalled pink sheets?

A That is true.

THE COURT: Before we get to that, by what standard do you measure whether the compensation would have been disapproved by the NASD?

THE WITNESS: Under the nasd regulations, we have determined what we call fair and reasonable, which has been established by businessmen in the industry. They review most of the offerings. At least they did at the time.

In a particular offering of this nature, something in the area -- an offering of this size, a best efforts

offering, something in the area of 18 per cent would have been allowable compensation.

Q Based upon this 18 per cent figure, how much additional compensation could Feis Securities have requested?

A There was a leeway of something in the area of $5,000 which Feis could have picked up in additional funds before we would have given them a disapproval.

Q $5,000 but not 40,000.

A That's correct.

Q Not 30,000.

A That's correct.

Q Not 20,000.

MR. MARCUS: Objection, your Honor. He answered the question.

THE COURT: Yes.

I am trying to understand it myself. Feis said that they were going to get 20 cents a share, which was 10 per cent, is that right?

THE WITNESS: That is correct, 10 per cent, 20 cents a share.

THE COURT: No. 250,000 would have been less than 10 per cent.

THE WITNESS: Ten per cent, but $25,000, I think.

THE COURT: $25,000. So that would have been 10 per cent. And you say that there was an allowable figure of another 8?

MR. SAGOR: No. Excuse me, your Honor. Five.

THE COURT: I thought he said 18 per cent.

THE WITNESS: 18 per cent is the maximum allowable.

MR. SAGOR: He was talking --

THE COURT: So if there is another 8 per cent, I don't get the figure. Eight per cent of 250,000 is how much?

MR. SAGOR: Nobody said 8 per cent, your Honor.

THE COURT: He said 18 per cent. If I subtract 10 from 18 --

MR. SAGOR: He can explain it.

THE COURT: All right. Explain the sight.

THE WITNESS: Ten per cent cash discount, which was disclosed on the front page. There was an allowance of $6,000 for expenses, which comes to approximately 2.4 per cent. We also include finder's fees, which are included here, of $4,000, which is an additional 1.6 per cent. And they were to receive 12,500 warrants exerciseable at $2.50, which we valued at approximately 2 per cent.

Add those up, and it will be an additional eight per cent.

THE COURT: That'w what I want to get clear.

THE WITNESS: Or six per cent. Excuse me. Six per cent.

THE COURT: And that was the standard method of doing it at that time by the NASD.

THE WITNESS: That is correct.

BY MR. SAGOR:

Q Now, are the pink sheets kept by you in the ordinary course of your business?

A Yes, they are.

Q And is it the ordinary course of your business to keep pink sheets?

A Yes.

Q And watch the price of a particular stock?

A Yes.

Q And for the days that you have selected have you brought those pink sheets with you?

A Yes, I have.

Q When, to your knowledge, did Cadgie Taylor start to sell on the market?

A The first quote --

MR. KLEIN: I object to this as being part of

the after market, not part of the case itself, beyond the scope of the indictment.

THE COURT: Overruled.

A The first quote I could find in the pink sheets was on October 26, 1970.

THE COURT: I think, as long as you've got a knowledgeable witness on the stand, you ought to take a minute and let him explain pink sheets. I've explained it before, but I'm only a judge and he is an NASD man.

MR. SAGOR: I thank your Honor.

May we have this marked as the next exhibit?

(Government Exhibit 35 was marked for identification.)

THE COURT: What is a pink sheet? What are the pink sheets?

THE WITNESS: The pink sheets are put out by what is knows as the National Quotations Bureau Service. They are representative bids and askeds of stocks, securities, and they are indications of what you may buy or be able to buy or sell a particular security at. And they also indicate who or what market maker or what securities firm you can purchase those securities from.

In other words, they indicate a market maker or a number of market makers, the dealers that deal in that

stock, and what they can -- approximately what you can buy or sell the security at.

THE COURT: Well, is there a requirement, if you put your name in the pink sheets, as to how many shares you must take?

THE WITNESS: If your name is in the pink sheets and you are a market maker, you are to stand ready to buy and sell. That's what you represent when you go into the pink sheet.

THE COURT: How much do you have to buy? At least a hundred shares?

THE WITNESS: Well, they come in different lots, small, odd lots and so on. So you have to stand ready to buy and sell, and I don't think there is a designated amount. That maybe I can't answer.

BY MR. SAGOR:

Q Mr. Warner, do you have the pink sheets in front of you?

A No, I do not.

(Documents handed to the witness)

Q Can you tell us what the bid and asked for was on October 26, 1970?

MR.KLEIN: May we have a running objection to this?

* * *

is the selected dealer's agreement.

(In the robing room.)

MR. KLEIN: Your Honor, my objection is two-fold --

THE COURT: First let me find out what he is offering before I start objecting.

MR. SAGOR: I really only want to offer the letter but your Honor doesn't want me to do that, the purpose being --

THE COURT: Never mind the purpose. Where is the selected dealer's agreement?

MR. SAGOR: But it has several amendments to it. What he is referring to in the letter is the amendment which makes amendments to the selected dealer's agreement. This is that.

THE COURT: Where is the selected dealer's agreement?

MR. SAGOR: Here is the amendment.

THE COURT: What I want to know is what does this add to the fact that Mr. Ridland signed the registration statement that you have in evidence?

MR. SAGOR: I don't have it in evidence. I have the 10-K in evidence. I will put in the registration.

THE COURT Put in the registration.

MR. SAGOR: This involves his participation in the whole registration process in addition for what it

is worth. It is just a letter showing his participation.

MR. BRILL: I don't think it is binding upon Mr. Steel, your Honor.

THE COURT: I think it isn't.

MR. KLEIN: I have a few more objections, your Honor.

MR. SAGOR: This is the agreement, the basic agreement, which has been modified there. I think all he is referring to in the letter is this modification.

THE COURT: It looks that way to me.

MR. KLEIN: Your Honor, the reason I object is two things. The date of this letter is January 16, 1970, long before the indictment date and before the alleged date of the conspiracy.

Objection No. 2 is that this witness, Mr. Warner, who impresses me as a very, very honest witness, a very straight witness, seriously --

MR. SAGOR: What does that have to do with anything?

MR. KLEIN: He says the only thing they have is this letter without the enclosures. I say you can't offer part without the enclosures. They don't have it. What we are doing here, Mr. Sagor is now looking at somebody else's file in another office, which is the SEC, and trying

to guess what was meant by Mr. Ridland or what the attachment might have been. Nobody saw the attachments. Who knows whether those are the ones.

THE COURT: He is not offering it for the truth. He is offering it for the fact that Mr. Ridland is participating in this underwriting or issue to the public as the president of Cadgie Taylor.

In view of your objection that you don't know whether this is attached to this, I will allow in only 36 and I won't allow the other stuff.

MR. KLEIN: Then I object to it --

THE COURT: You have now established the United States Attorney's point.

MR. KLEIN: Your Honor, why do you threaten me each time on those things?

THE COURT: It is a fact. He said he didn't want to put them in. I said put them in. You object. So he won.

MR. KLEIN: Then I object to it on the ground I originally urged, it is dated January 16, 1970.

THE COURT: I overrule that. Don't misunderstand me. I think you make good objections, only sometimes I think they are wrong and I have to rule against you. It sometimes happens that a defense fall into the business of

helping the Government, and the Government similarly in this case, I must say, sometimes helps the defense, in my view, where I sit, because I sit looking at both sides.

MR. BRILL: Not intentionally, I am sure.

THE COURT: Not intentionally on both sides.

MR. SAGOR: I hope I am fair, Mr. Brill.

MR. BRILL: Will your Honor indicate that this is not received against Mr. Steel?

THE COURT: Yes, I will, if you remind me. Just raise your hand. Don't say anything. I will do it.

MR. SAGOR: I will object to any further documentation with respect to Mr. Bassani. That would not be proper redirect. Also, there are some further objections I have.

If you tell me what you are putting in, I would like to make some objections on the record on it.

MR. BRILL: I don't know what he is talking about.

MR. SAGOR: You put in an Exhibit D-2. You had that marked at the end of yesterday. Do you plan to offer Exhibit D-2? If you do, I object to it.

THE COURT: D-2 is in evidence. It came out of the records of Kelly, Andrews.

MR. SAGOR: D is in evidence?

THE COURT: It is the next page.

* * *

(In open court, jury present.)

MR. SAGOR: Your Honor, may we proceed?

THE COURT: Yes.

MR. SAGOR: 36 for identification is offered.

KLEIN: With my objection of course, your Honor.

THE COURT: Received.

(Government Exhibit 36 for identification was received in evidence.)

THE COURT: Ladies and gentlemen, this letter is a letter from Mr. Ridland, one of the defendants, to the NASD, the National Association of Securities Dealers, signed by him apparently, which simply transmits some documents. It was allowed in evidence as indicating that Mr. Taylor, if you so find, was active in connection with the new issue put out by Cadgie Taylor. It is, however, not binding upon the defendant Steel or the defendant Feis, and don't consider it as against them.

MR. KLEIN: Exception.

MR. SAGOR: Your Honor, with that understanding, there is no need to read the letter.

THE COURT: Yes.

MR. SAGOR: I'll just hold it up to the members of the jury for them to note that it is signed by Mr. G. C.

Ridland president of Caddie Taylor.

MR. KLEIN: Why don't you tell the jury the date of the letter, Mr. Sagor?

MR. SAGOR: Certainly. The date of the letter is January 16, 1970.

MR. KLEIN: And I have no objection to having it read, your Honor. I'll read it.

THE COURT: There is nothing to read. It is not offered for the truth of anything. It is simply offered as a fact that allegedly Mr. Ridland had something to do with the preparation of the prospectus, because you'll notice this is January 1970 and the prospectus is later, it is dated June 1970 by the time it got through the SEC.

So that this is preliminary to the finalization of the form of the prospectus and it is allowed in evidence only for one purpose, to show that Mr. Ridland had something to do with the preparation or the filing of the prospectus.

MR. SAGOR: No further questions of Mr. Warner, your Honor.

RECROSS EXAMINATION

BY MR. KLEIN:

Q Mr. Warner, that letter referred to, that just came into evidence --

THE COURT: 36.

Q (Continuing) -- 36, that referred, did it not, to amendments to the registration statement?

A Amendment No. 1 to the registration statement, yes.

Q And in your experience, isn't it usual and normal course, when a new issue comes out, for the SEC to require amendments?

A That is correct.

Q And wouldn't you say that of the number of new issues that have come across your desk or that you are familiar with, most of them had at least one or more amendments required by the SEC?

A That is correct.

Q And have very few of them are --

THE COURT: That is enough already.

MR. KLEIN: I beg your pardon?

THE COURT. I say you've made your point. Go to another subject. We've got to finish this case sometime.

MR. KLEIN: All right.

May I have this marked, please, for identification?

(Defendant Ridland Exhibit U was marked for identification.)

Q Mr. Warner, a moment ago you were looking at some pink sheets and telling us the bid and asked prices quoting

quotations for that particular day. Do you recall that a little while ago? Do you recall testifying a short while ago about bid and asked prices from the pink sheets?

A Yes, I do.

Q I show you Defendant Midland Exhibit U for identification and invite your attention to copy of today's New York Times and direct your attention to the column on the left and ask you to look at that.

Are you familiar with the fact that that article, the contents of that article, indicates that the price of silver reached new record highs?

MR. SAGOR: Unless I can put in the price of what Cadgie Taylor is selling at today, I object to that.

THE COURT: Well, I might do that. If this goes in, I may do that.

MR. SAGOR: Okay.

MR. KLEIN: Your Honor, at this time I would like to move for the withdrawal of a juror and the declaration of a mistrial. Each time I try to do something, we get the threat of something else coming in.

THE COURT: Motion denied. Well, I'm warning you now.

MR. KLEIN: Yes. But this is a case of trial by threat.

THE COURT: No, no. I'm suggesting to you in advance that maybe certain evidence may become admissible if you put this in, if I allow it in.

MR. KLEIN: Yes. But it conveys to the jury an ominous impression that I'm not being forthright, I'm only putting in a portion of evidence.

THE COURT: No. You are being very forthright.

MR. BRILL: Your Honor, could we have a side bar? I'm concerned about this.

THE COURT: Yes.

(At the side bar)

MR. BRILL: It seems to me that, and I think we discussed this earlier, the whole purpose of the pink sheets and all of the testimony to show the price of the stock was to demonstrate a basis for supporting an argument which was made in the opening and which will again be made in the closing by the prosecutor, that this was worthless stock - as he characterized it, worthless pieces of paper.

I urge upon your Honor as an objection to the reception of this kind of evidence that it created an inflammatory situation. He has already succeeded, the prosecutor has already succeeded, in conveying to this jury and to anybody else in this courtroom who has heard it the

impression that these defendants were engaged in the sale of worthless pieces of paper, valueless pieces of paper. He got the opinion of Schiffman on that point, he got the opinion of Bassani on that point, over objection in both instances. He has now supported and given the shadow of credibility to both Bassani and Schiffman by the introduction of these documents from an ostensibly respectable source, Mr. Warner, or an apparently respectable source.

I think that to leave that impression that what was sold were worthless pieces of paper, in view of the statements made, the disclosures made in the prospectus that it was speculative, that there was a risk, that there were hopes in view of the mining claims that were owned by the company -- that it is only fair to permit the witness to say that silver futures have reached a record high now and that it would not be fair to permit him to go back to show what is the price of Cadgie Taylor shares, the reason for that being that Cadgie Taylor has not been able to continue its exploration and development in view of the pendency of the investigation and the prosecution.

MR. KLEIN: Furthermore, Bassani testified --

THE COURT: Don't make faces in front of the jury, please.

MR. BRIEANT: He can't help it.

* * *

MR. SAGOR: All right, your Honor.

Q Do you know what that sheet means, D-2?

THE COURT: Not what it means. It is not in evidence yet.

MR. SAGOR: All right.

THE COURT: The only question is, in your opinion, knowing that book, D, does that D-2 come out of that book?

MR. SAGOR: It does, your Honor. I agree to that, that it does come out of that book.

THE COURT: What else do you want to develop, then?

MR. SAGOR: All right. If your Honor is admitting it, then I would like to go further and indicate what it means.

THE COURT: No. Your turn will come. Mr. Brill is still on cross examination.

Q Do you know on D-2 what significance that has?

MR. BRILL: That is objected to.

THE COURT: Yes. That is not voir dire.

Q At the time that that book was made, in October of 1970, you said you were using a printout operation at Kelly, Andrews & Brindle?

A Yes. It is a typewriter where everything was

typed in at the end of the day.

Q And based upon that was that printout, those pages, made?

A Based upon whatever business you are doing, and this related to -- it related to your buys and sells.

Q Was there ever a buy slip from --

MR. BRILL: Objection.

THE COURT: That is not proper.

Let me ask you something just mechanical. There was some evidence here that there were sheets dated October 2nd, 1970 purporting to show that all of the shares, a hundred thousand shares, were sold on that same day.

MR. SAGOR: 103,000.

THE COURT: 103. Three was cancelled.

Do you remember that?

THE WITNESS: I think so, yes.

THE COURT: All right. I believe you testified that it wasn't all done on August 2nd, it was done later.

THE WITNESS: October.

THE COURT: When I say August 2nd, am I right?

MR. BRILL: No. October.

THE COURT: October and is what I meant.

And you said that was not so, actually.

THE WITNESS: No, we had not sold the stock by

October 2nd.

THE COURT: And do those sheets appear in this book?

THE WITNESS: I would think that the records of the purchases of Caddie Taylor stock, the customers, would appear in the book, yes.

THE COURT: And yet it was a wrong date, and yet it appeared in your computer printout, is that it?

THE WITNESS: Well, all you would do is sell it for whatever you want it. It wasn't like --

THE COURT: That's what I am trying to find out.

THE WITNESS: "Computer" may be the wrong word for this thing.

THE COURT: It is a printout, a typewriter printout.

THE WITNESS: A simple typewriter type of thing.

THE COURT: So you could put whatever date you wanted to on the typewriter printout, is that right?

THE WITNESS: I believe so, yes.

THE COURT: And you don't know on what day actually this D-2 was printed, is that it?

THE WITNESS: No, I wouldn't, your Honor.

THE COURT: You wouldn't.

I think that's enough on that.

MR. SAGOR: I have nothing further. I object to the admissibility of that. If it is admissible, I would have further questions.

THE COURT: It is admitted. It is admitted in evidence as coming out of the book, subject to any explanation that anybody can offer. D-2 is in evicence.

(Defendant Steel Exhibit D-2 for identification received in evidence.)

MR. BRILL: May I just take it and read it to the jury, your Honor?

THE COURT: Yes.

MR. BRILL: And could I at thesame time have D-1, consisting of the five sheets?

D-2, relating to the buys of Kelly, Andrews & Bradley --

MR. SAGOR: I would object to relating it to the buys.

MR. BRILL: It says "buys."

MR. SAGOR: It says "F-11 buys."

MR. BRILL: Could I ask him a question?

THE COURT: Yes.

CROSS EXAMINATION CONTINUED

BY MR. BRILL:

* * *

dated 11/4.

Q That is November 4, 1970?

A Yes.

MR. SAGOR: Specifically that page, may that be marked 37-A for identification?

(Government's Exhibit 37-A marked for identification.)

MR. SAGOR: Your Honor, once Mr. Hughes affixes it to the page, may I take that from 37 for identification?

THE COURT: Yes.

Are you offering it in evidence?

MR. SAGOR: Yes, I am offering it.

THE COURT: Any objection?

MR. BRILL: Yes, your Honor, because it relates to the first transaction being shown on November 4, 1970, I think he said.

MR. SAGOR: That is the whole point, Mr. Brill.

THE COURT: The point is to show, apparently, that the trading book record of Kelly, Andrews & Bradley did not reflect the purchase which is shown on Exhibit D-2 that was put in apparently showing a purchase by Kelly, Andrews & Bradley of 100,000 shares of Cadgie Taylor for their own account.

MR. SAGOR: Your Honor, may I ask Mr. Bassani

one last question.

MR. KLEIN: Did you say Mr. Caggie Taylor?

THE COURT: No. I changed it.

MR. KLEIN: Mr. Feis.

THE COURT: Perhaps I misspoke myself. Do you want me to repeat it?

MR. KLEIN: I wanted to be clear.

THE COURT: I appreciate it. I sometimes misspeak myself.

Q You said the first trade was on November 4th. Would you look at the record again?

A On the very top of the page on the other side, there is a transaction 10/30 for trading.

Q Did you tell me that as I just walked up front?

A Yes.

MR. BRILL: May I, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. BRILL:

Q When did you look at this page for the first time in your life?

A Since I left Kelly, Andrews & Bradley I haven't looked at it.

Q I beg your pardon?

* * *

my own knowledge could he change the language to transactions to make it clearer, did I have any direct transactions with Memme?

MR. BRILL: No.

THE COURT: He is not asking you that. He is asking you whether you happen to know whether or not -- is that what you want, Mr. Brill --

MR. BRILL: Yes.

THE COURT: -- Memme actually bought or sold, recognizing you were not a member of Memme & Company, you didn't sit with them in the office and so on? The question is did you know anyhow without being part of them what they were doing.

THE WITNESS: Other than the confirmations that were shown to me, no.

THE COURT: All right.

Q And that is the confirmation with respect to the 400 shares shown in 37A?

A That and I believe one or two confirmations that were shown to me by the U. S. Attorney's office.

Q I am asking about your own knowledge and you are telling me about something that somebody else told you about.

MR. SAGOR: Your Honor, to his own knowledge,

a confirmation is a business record. How else do you get knowledge of something?

THE COURT: That's right.

Q You are satisfied with that, that is your whole answer, isn't it?

A That is the best answer I can give.

THE COURT: Let me clarify it. If Memme bought stock from John Jones & Company, would you know about that?

THE WITNESS: No, there would be no way.

THE COURT: If they sold stock to John Jones & Company, would you know that?

THE WITNESS: No.

THE COURT: That is what Mr. Brill is asking you, whether you know anything about any trades between Memme & Company and third parties.

THE WITNESS: Absolutely not.

THE COURT: Next. Anybody want to question him further?

MR. KLEIN: Yes. I will be very brief, your Honor.

RECROSS EXAMINATION

BY MR. KLEIN:

Q Mr. Bassani, you will recall we were talking

about those four checks totalling $200,000, Exhibits 12, 13, 14 and 15, which Kelly, Andrews and Bradley made payable to the order of Feis Securities; do you recall that?

A I recall having seen the checks, yes.

Q Do you recall the first one was dated October 21st for $50,000,and the second was October 22 for $50,000 and the third was October 22 for $25,000, and the fourth was October 29th for $75,000; do you recall that?

A It sounds approximately correct.

Q Would you tell us whether you have any record here which would indicate whether the dates and amounts of these checks have any direct relationship to the monies received by Kelly, Andrews and Bradley from the sale of Caddie Taylor stock, in other words, what I am trying to say is, on October 21, 1970, Kelly, Andrews and Bradley issued a check for $50,000 to Feis, is that correct?

A Yes.

MR. SAGOR: Your Honor, I will object to this. It is improper re-re-redirect.

THECOURT: Overruled. Let's clarify it now once and for all.

MR. SAGOR: This is different. We had

another witness on this score. You are opening up something again.

THE COURT: I don't care. He is entitled to that.

MR. KLEIN: Thank you, your Honor.

Q Let me approach it a different way and get back to that same point.

Of your own knowledge, do you know whether Kelly, Andrews and Bradley sold any shares of Cadgie Taylor during September, 1970?

A I know that Mr. Miller had supposedly been selling the stock. I don't know exactly what was sold or not sold.

Q But you do agree, don't you, that the first money in connection with Cadgie Taylor stock that Kelly, Andrews and Bradley paid to Fein was represented by Exhibit 12 which is a check dated October 21, 1970, for $50,000, is that right?

A Yes.

Q And the $50,000 would cover the purchase price, the selling price, of 25,000 shares of Cadgie Taylor, is that right?

A Yes.

Q Do you have any book or record to show that

by October 21, 1970, Kelly, Andrews and Bradley had sold and received payment for 25,000 shares of Cadgie, Taylor stock?

MR. SAGOR: I will object, your Honor. It is a twofold question. It assumes that there is one book that somehow has both these pieces of information. If he breaks it down, maybe that will be easier.

THE COURT: I don't know what he can break down. It is a simple question.

MR. SAGOR: Is there a book which shows when the proceeds came into Kelly, Andrews and Bradley? I think the witness can probably answer that.

THE COURT: All right.

There has been some testimony about this already, that all the sales are dated October 2nd, I think.

MR. SAGOR: Right, and the proceeds came in at various times. There are some records in evidence.

THE COURT: Let him ask about the proceeds first. Then we'll get it straightened out.

Q What I am trying to get you to focus on is that -- direct your attention to the fact that on October 21st, there is a $50,000 check. On the next day, there are two checks for 50,000 and 25,000, and then a

week later, on the 29th, there is a check for 75,000.

Is it your testimony that Kelly, Andrews and Bradley -- withdrawn.

Is there any record thatyou can point to which will indicate that between October 21st and October 22nd, Kelly, Andrews and Bradley received an additional $75,000 which is reflected -- for the sale of hte Cadgie Taylor stock which is reflected in the two checks issued on October 22nd?

A Well, I would like to look at the checks for a second.

MR. KLEIN: Would you please hand them to him, 12, 13, 14 and 15.

MR. SHAPIRO: Here are the documents (handed Mr. Klein)

(Mr. Klein hands documents to witness)

Q Am I correct on the date, Mr. Bassani?

A Yes. The first check is October 21, 1970. All right?

Q $50,000?

A The check is for $50,000. You will notice on the check that the check is certified.

Q Is it clear --

THE COURT: Let him finish.

A The second check is October 22, also for $50,000. Now, that check also is certified. The third check on October 22 for $25,000 is not certified. And the final check of October 29th for $75,000 is not certified.

Now, what I am trying to get at by this, in answering your question, is that as monies came in, as customer money came in, checks would have to be deposited. Some customers that bought this stock lived in Jersey. They would send their check in for a purchase. The check would take seven days to clear. As the money came in we paid it out towards the purchase of this stock. But in this particular instance here, the first two checks are certified, the remaining two are not.

Q Please produce a deposit slip or deposit entry showing a deposit of $50,000 between October 21, 1970, and October 22, 1970, which permitted you to certify the second $50,000 check.

A You wouldn't need a deposit slip for that day. Money could have been deposited over the period of the last week and a half and had not cleared, checks had not cleared, customer checks. Stock could have been sold from customer accounts and trade date settlements.

Q This is all argument, isn't it?

A No. This is fact.

Q Do you have any books to show that these payments corresponded exactly to the monies that came in from specific sales? Can you trace those monies?

A I'm not sure I understand your qeustion, but I would like --

Q Let me ask you another question, then, a different one. Do any part of any of these checks represent monies that came in from some other source besides your sale of Caigie Taylor stock to the public?

MR. BAGOR: That is impossible. Money is money, fungible. There is no way of telling.

THE COURT: Yes. It is a good objection.

MR. KLEIN: Your Honor, it is obvious --

THE COURT: I mean, if you have $50,100 in the bank, you don't know which hundred is in the 50,000 or which is not in the 50,000?

MR. KLEIN: Your Honor, if I sell you Caigie Taylor stock for somebody else, I'm supposed to take that money and give it to him. But if I owe him money and I get it from some other source and give it to him and credit it to you, that is another thing. I'm trying to show that these four checks have no relationship

whatsoever to the actual sales and resales made by Kelly, Andrews and Brady of the Cadgie Taylor stock.

THE COURT: I'm allowing you to proceed on that line. But how can anybody say that all of the particular account, unless it cleaned out the account to a zero balance, came from a certain sale of stock? Funds are mingled.

Q You say that the October 21st check for $50,000 covers the purchases or the sales made in September?

A No, I didn't say that.

Q You say you made the payments as the monies came in, is that right?

A As the money came in and checks cleared.

THE COURT: I'm going to ask a general question, if I may. Maybe it will help you, or help you both on the thing.

When you sell the stock, you send out a confirmation slip. That is step No. 1.

A That's correct.

THE COURT: Step No. 2 is you get a check in, right?

Step No. 3 is you deposit that check.

Step No. 4 is when the check clears, is that

right?

THE WITNESS: That is correct.

THE COURT: It is only after it clears that it is money in the bank, generally, is that correct?

THE WITNESS: That's correct. Or in place of step No. 2, where a check is being sent in, a customer will instruct you to sell stock that he has in his account of which you have then you deliver it five business days later and receive payment for it.

BY MR. KLEIN:

Q Are you telling us, then, that all the checks cleared in four different bunches, 50,000 to enable you to certify a check on the 21st, 50,000 to enable you to certify a check on the 22nd, 25,000 to enable you to issue check on the 22nd, and the $75,000 to enable you to issue a check on the 29th of October? Is that what you are saying? There were four dates when the monies came in and cleared?

A No. I'm saying that money came in over a period of time, all during the month of October, and I'm saying that evidently we did not have $25,000 additional on top of the 50 on October 22nd that we could certify. So evidently money had not completed coming in yet and clearing, and that's why this check is not

certified.

Q This is your conclusion now, isn't it?

A No. It is not a conclusion.

Q Did you have anything to do with the issuance of that check? Did you issue it?

MR. SAGOR: Your Honor, why ask him questions if he didn't? Why start asking questions and then refuse to take the answer? I don't understand.

THE COURT: I'll leave that for the jury to determine.

Q Did you sign those checks? Did you issue the checks? Whose name appears as the issuer? Can you tell us that from --

THE COURT: How many questions at once, Mr. Klein?

MR. KLEIN: I would like to get a responsive answer.

THE COURT: But not if you are going to ask him three or four questions in rapid succession. He can't even open his mouth.

MR. KLEIN: He has a speech prepared and I don't want to hear it.

THE COURT: Wait for an answer first. What is your first question?

Q The question is, who signed the check in behalf of Kelly, Andrews and Bradley?

A Alex Poland.

Q When was the stock that was sold in September paid for by the customers?

A I have no idea.

Q What was the settlement date of the September sale?

A I have no idea if there were any September sales.

Q Suppose I told you that Mr. Schiffman testified there were about $20,000 of September sales, 20,000 shares, excuse me, approximately 20,000 shares?

A Very possible. I couldn't answer that.

Q Well, if there were, wouldn't the money have been collected and paid for during the month of September?

A Not necessarily so.

Q Let me ask you one more question.

Isn't it a fact the reason these four checks are dated the 21st, 22nd, 22nd, and 29th of October was to pay for the purchase of 100,000 shares of Cadgie Taylor stock that you purchased from Feis and for which Mr. Feis was dunning you during the month of October?

A No.

Q Did you testify that Kelly, Andrews & Bradley was short of money toward the end of October 1970?

A We were tight, yes.

Q 110,000 tight?

A 110?

Q Didn't you testify that around the first week of November or the end of October you owed about $100,000 or so, you were short?

A No. I testified that in December, at one point in December, we were $110,000 overdrawn.

Q And did that come about overnight or did it come about gradually, during the period about the end of October?

A No. That came about very quickly, in November, late November and early December.

Q And you weren't short at all in October?

A When you say "short," nothing like the kind of money you are talking about. We may have been tight, but I don't think we were out of ratio or short.

Q Weren't you tight throughout September and the first part of October up until October 21st?

MR. SAGOR: If your Honor please, I object. There is a difference between owing more and having lots of cash in the bank. Somebody could be bankrupt and have a million dollars in cash in the bank.

THE COURT: Well, he is asking whether he was tight, whatever that means.

MT. SAGOR: What does that mean, no cash in the bank or assets --

THE COURT: I'll allow it.

Q Did you have sufficient cash in the bank from September 15th to Octob. 20, 1970 to pay $200,000?

MR. SAGOR: To what?

Q To October 20th, to pay $200,000.

A $200,000 for what?

Q For anything, to Feis.

A No, we didn't have $200,000.

Q And the first time, do I understand the --

MR. SAGOR Excuse me. I object. There has been no showing that $200,000 came in from customers as of that time.

MR. KLEIN: He said they didn't have $200,000 cash.

MR. SAGOR: Sure. Because no customers paid for the stock.

THE COURT: We can't try a case, gentlement, all at once. You have got to wait until you sum up and then you will explain what the inferences are that you wish to draw. Each side will do his own.

Q The first time that you got sufficient monies to pay $200,000 was commencing with October 21, 1970, October 22nd, October 22nd and October 29, 1970, and prior to that time you didn't have $200,000 in cash available in the bank to make these checks, is that right, sufficient

for that?

A I would say that prior to that date we did not have $200,000 in cash in the bank.

MR. KLEIN: Thank you.

THE COURT: Mr. Sagor?

MR. SAGOR: We have another witness. No further questions of Mr. Bassani.

THE COURT: Well, just to round that out, I just want to ask you one question.

Did you owe anybody $200,000, as far as you know, in the months of September and October 1970?

THE WITNESS: Other than subordinated loans in the firm or anything like that, I mean there was no $200,000 obligation.

THE COURT: All right. That is all. You may step down.

(Witness excused.)

THE COURT: This would be a good time to take a luncheon break. We will take a luncheon recess until 2:00 o'clock and then we will have some more witnesses, I guess.

MR. SAGOR: Yes, your Honor.

(A luncheon recess was taken.)

AFTERNOON SESSION

2:00 p.m.

(Jury not present.)

MR. HILL: I acknowledge that during the luncheon recess today Mr. Igor gave to me Exhibits 3551, 3551-A, 3551-B and 3588, all of which are with respect to Arnold Widlitz.

(In the robing room.)

THE COURT: Who wants me now?

MR. KLEIN: I do, your Honor. I wanted to renew again at this time the motion I had made in chambers earlier in the case about the jury accepting your Honor's explanation as an attenuation or extension of the witness' testimony. I feel that your Honor has punctuated the testimony throughout and the jury is accepting your Honor's remarks as evidence.

Coincidentally, your Honor's explanation always seems to come when the defense has mounted a point or offensive and it blunts the attack and it is really assisting the prosecutor.

THE COURT: As I said before, give me a for instance and I will rule on it.

MR. KLEIN: I don't have the record in front of me, but one instance occurred this morning. I am trying to think what it was. I don't have the specific instance, but

I am sure it is throughout the record. Every time I feel defense counsel are making some headway, your Honor has become an adversary and very cleverly has pointed out the opposite side of the picture to the jury.

THE COURT: No, I don't think so.

MR. KLEIN: Or the full picture.

THE COURT: The full picture maybe.

MR. KLEIN: In an adversary proceeding, two people can't speak at the same time. So we have an order of proof. First the Government goes and then we go and then rebuttal and they would have an opportunity to present the rest of the picture.

THE COURT: After I ask a question, nobody says you can't get up and ask a question. I have never denied that.

MR. KLEIN: You haven't done that. Every time I raise a point you are coming up with the opposite point. I am going to feel you are the adversary.

THE COURT: I am sorry you feel that way. All I wanted to do is keep the jury from going off on side tracks which are not correct.

I don't mind a lawyer creating some confusion, in other words, sidetracking is part of defense of a criminal case and I recognies that, but I think that when you have a

specific question put in such a way that it doesn't embrace the whole thing to make it clear, then I feel I must intervene as a federal judge. That is my theory.

MR. KLEIN: My oath as defense counsel is to present the evidence in such a manner, legally in such a manner, as to best portray my client's defense in the case.

THE COURT: Of course you should. I haven't stopped you. I have given you great leeway in cross examination. I have given you the greatest leeway.

MR. KLEIN: Perhaps. I have no obligation to present the prosecution's side. I would be derelict in my duty if I did.

THE COURT: You have to present it in a fair way. You are dealing with a jury that are not expert. I am not going to develop this theme too much. The only times I have intervened, I will repeat this for the second time in the record, is when I feel there has been confusion or lack of knowledge about a particular legal point or definition, if you will, and that I would do in the ultimate charge anyhow.

So I do it earlier because by the time I charge I will forget about it.

The other thing is when I think there has been a red herring drawn across the trail completely, I try to ask

a question to straighten it out but not in an adversary manner and where the witness can answer yes or no, generally, you will notice. I don't tell him what to say.

MR. KLEIN: It has gotten to the point now where the jury, every time I make a point your Honor takes up the cudgels.

THE COURT: There are no cudgels. What cudgel? I ask you again on the record what are you specifically complaining about?

MR. KLEIN: I have a specific instance at the moment.

THE COURT: Then I can't do anything.

What else do you want?

MR. KLEIN: That's all.

MR. MARCUS: There is also the matter of our last week's meeting and Mr. Sagor was going to contact Washington with regard to wiretapes. We still haven't heard anything.

THE COURT: I asked you to call up.

MR. SAGOR: I did. They have given me all negative indications. What I want from them is something in writing. So far it is negative from every agency. I want something in writing.

THE COURT: When are you going to get it?

MR. SAGOR: They have promised it by Monday. It might be in my in basket. I will keep after it.

THE COURT: Mr. Sagor is doing his best.

If you can speed it up, I would be happy.

MR. SAGOR: If we could go off the record.

MR. BRILL: If they would let us go down there and look in their files, it would help.

MR. SAGOR: The difficulty is they have no central file for safekeeping because they don't want that information out. So each agency has to be queried and it takes time.

MR. KLEIN: That is no problem. I have a solution.

THE COURT: Well, all right.

(Discussion off the record.)

THE COURT: Perhaps you had better tell us now what these bank witnesses intended to testify to.

MR. SAGOR: Sure. The bank witnesses are going to produce several accounts, the first of which is the special Cadgie Taylor account, which is referenced in the prospectus, showing the funds going into the account and the funds leaving the account and the deposits in the account.

We will know precisely when the account opened up, when deposits were made and when the account closed.

MR. KLEIN: Whose account is that?

MR. SAGOR: Cadgie Taylor account in the name of Feis.

There will also be Feis' personal account at Manufactures for the month of November which shows Feis' commissions of approximately $11,000 leaving the Cadgie Taylor special account and going into Feis' account.

You will also see a certified check on November 5th with the $10,000 which arguably is the $10,000 of commissions that was paid to Kelly, Andrews & Bradley, as you remember, on November 5, 1970. That is the witness from Manufacturers.

The witness from another bank in Arizona, which is the corporate bank account of Sierra Silver, will show the money, the $154,000 approximately from Manufacturers going into that account at the latter part of October, 1970.

You will also see money going out of the corporate account, some $15,000, directly on November 3rd into the personal account of Mr. Ridland.

And you will also see no funds of the $60,381 that is owed by Cadgie Taylor to Sierra Silver at all going into the corporate bank account of Sierra Silver, which is listed on the SEC report as belonging to this First National Bank of Arizona.

So you will see the Cadgie Taylor account, the

Sierra Silver account and Dr. Ridland's personal account. YOu will see $85,000, for example, right after the October 31st closing, jumping out of Cadgie Taylor into Dr. Ridland's personal account and into Sierra Silver and then a day later you will see a check for $40,000 and a check for $10,000 jumping out of Sierra Silver and we know from the checks we got from Dr. Ridland, which I am not putting in, they go to a Canadian account of Sierra Silver. It goes out of the Canadian account into a brokerage house.

We are not putting in those checks. I just tell it to Mr. Klein or whatever he wants to make of that. At any rate, those are the two witnesses.

MR. KLEIN: I think it would be objectionable unless there is connection.

THE COURT: Why is that?

MR. KLEIN: Do you have the Sierra Silver New York account here?

MR. SAGOR: The New York account?

MR. KLEIN: Did they have a bank account here?

MR. SAGOR: Not known to the Government. We have the listed account of Sierra Silver with the official document that they filed with the SEC.

If they have hidden accounts, I don't know about them. Of course, we would be glad to subpoena any

accounts.

MR. BRILL: I don't think it is fair to talk about hidden accounts. It generates an atmosphere in the record --

THE COURT: Not with me.

MR. BRILL: He didn't say Kelly, Andrews & Bradley had a Swiss account. That is ridiculous.

MR. SAGOR: Never heard of it.

MR. BRILL: What?

THE COURT: He said he never heard of an account.

MR. BRILL: You never heard of a Swiss account of Kelly, Andrews & Bradley?

MR. SAGOR: No.

MR. BRILL: You haven't been in this case very long.

MR. KLEIN: One thing I think would be objectionable would be any payment that Cadgie Taylor made to Dr. Ridland unless it's connected or any payment that Cadgie Taylor may have made to other accounts, Canadian accounts. It's got nothing to do with this case.

THE COURT: I am inclined to agree with you. I am waiting to hear what the connection is.

MR. SAGOR: Twofold. The payment from Cadgie Taylor of $35,000 into Dr. Ridland's account is, one,

evidence of misappropriation because there is no basis in the prospectus by virtue of salary or the distribution of funds in any of the filed documents showing that Cadgie Taylor had owed Dr. Ridland any money.

There is no basis for his taking $35,000.

THE COURT: What has that to do with this case?

MR. SAGOR: It shows several things. The bank records from Arizona show several things. One, on October 31st there is a deposit in cash of $50,000, allegedly, in Sierra Silver. That shows Dr. Ridland's availability to have some $50,000 in cash being deposited in an account.

Two, we know the failure to put in the $60,381 shows a misappropriation stated in the prospectus for those funds from Cadgie Taylor to be applied to Sierra Silver.

THE COURT: What do you want to show?

MR. SAGOR: It shows both misappropriation on the part of the department in this case and the cash availability to make the $40,000 cash payoff.

MR. KLEIN: May I address myself to the second point?

THE COURT: How do you know it's from Ridland?

MR. KLEIN: There is no proof Ridland gave any money.

MR. SAGOR: How do we know what?

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THE COURT: The $50,000 deposit was from Ridland.

MR. SAGOR: Ridland makes the deposit in Sierra Silver.

THE COURT: How do you know Ridland made the deposit?

MR. SAGOR: I think his name is on the deposit slip.

THE COURT: Check it now.

(Pause.)

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MR. SAGOR: His name is not on the deposit slip.

THE COURT: On what do you base your statement that it was --

MR. SAGOR: Cash. It is to his company. It is to Sierra Silver. He is the president of the company.

MR. BRILL: It is a public company.

MR. SAGOR: It has no employees and it's a one-man operation. I could prove that.

At any rate, these bank records, I put in the bill of particulars that there is a false statement as to proceeds. I believe that there is substantial evidence with respect to the Cadgie Taylor Company, one, of misappropriation and, two, false use of proceeds. I intend to prove it.

THE COURT: Do you intend to prove it was Cadgie Taylor money that resulted in the 40,000?

MR. SAGOR: No. It is circumstantial. I think that there is a prima facie -- I didn't stick my neck out and say this is where the money came from, but it is highly significant --

THE COURT: I wanted to make it clear.

MR. BRILL: It is not circumstantial.

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It is purely inferential.

THE COURT: I think you are allowed to show somebody who is alleged to have given cash has a source of cash. The only thing I object to, I don't want him say Ridland has a source of cash. The company, Cadgie Taylor, has. There is a big difference.

MR. SAGOR: I would not claim that.

THE COURT That would be error.

MR. KLEIN: I think availability is not circumstantial at all.

THE COURT: I disagree with you. So there we are.

MR. BRILL: The dates --

MR. KLEIN: This was after the fact, your Honor.

MR. BRILL: -- generate a reasonable doubt.

THE COURT: You can argue that to the jury. What is the date of the $50,000?

MR. SAGOR: October 31st.

THE COURT: '70?

MR. SAGOR: It is deposited November 2nd.

THE COURT The testimony is that the 40,000 was paid November 5th.

MR. KLEIN: But you don't show any money coming out of Sierra Silver.

THE COURT: I understand that.

MR. KLEIN: And nobody has testified in this case it came from there. The only testimony I heard, Schiffman said he saw Scheer with some cash and the other fellow, Bassani, testified he saw Poland and Scheer with cash.

THE COURT: So far there is no place in the company from which it comes, and I think the case will end that way,probably, as direct evidence. But I think he is entitled to show that they had available some cash.

MR. KLEIN: I disagree with your Honor. The other point he is making is that Mr. Ridland -- the company issued a check to him for $31,000.

MR. SAGOR: $35,000.

MR. KLEIN: That is not evidence of wrongdoing or inconsistent with the prospectus.

MR. SAGOR: You won't see it in any of the documents.

THE COURT: It is not consistent with the prospect if there was enough money without the proceeds of the sale.

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Was there enough money without the proceeds of the sale?

MR. SAGOR: No. The bank had a few hundred bucks in it.

THE COURT: That is the foundation you will have to lay. You will have to show that there was no money in the bank, that the only money they took in was from the proceeds, and then I will allow it circumstantially.

MR. SAGOR: Their ending balance is $2.54 before the proceeds.

MR. BRILL: Which account?

MR. SAGOR: Cadgie Taylor account.

MR. BRILL: Special acaount?

MR. SAGOR: Corporate account. $2.54. On October 30 they deposited a check for $153,921.54, which is from the special Cadgie Taylor account in New York. Their financial statements are written up as of October 31, 1970. The next day, 11/3, there is withdrawn from Cadgie Taylor $85,000, 35 of it goes to Dr. Ridland's personal account and 50,000,which is no where in the prospectus, goes to Sierra Silver. Apparently they have already paid off Sierra Silver the 60,000.

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THE COURT: Where had they paid them off the 60?

MR. SAGOR They didn't. You won't see it.

THE COURT: That is the 50, isn't it?

MR. SAGOR: Thatmoney goes immediately out of Sierra.

THE COURT: They said they owed them 60 and they paid them 50. What is wrong with that?

MR. SAGOR This money is immediately checked out Sierra Silver's account.

THE COURT: They never said they wouldn't check it out. They owed the money, they paid it. I don't follow that at all.

MR. SAGOR: Your Honor is missing something. From the proceeds of the $200,000, 63,000 of that must go to Sierra Silver. If it doesn't go to Sierra Silver then it has to go into Cadgie Taylor. But it doesn't go into Cadgie Taylor. In other words, Cadgie Taylor is short over $110,000. The 63, which it never gets, and the 50,000, which is taken out from here going into Sierra Silver.

60 of it has to go to Sierra Silver, but not both. Not 110,000. That is not called for.

MR. BRIEF: How can you have it twice?

MR. SAGOR: That is the whole point.

MR. BRILL: 50,000 is paid to Sierra Silver of the 60,000-odd owed to it.

MR. SAGOR: That is the point. The 60 never comes in. Either the 60,381 goes into Sierra Silver or it goes into Cadgie Taylor. It goes into neither. It has to go into one of them.

THE COURT: Where does the 50 come from?

MR. SAGOR: The 50 comes from the check from Manufacturers.

THE COURT: Which is from the proceeds of Cadgie Taylor?

MR. SAGOR: Yes. So Cadgie Taylor has paid out, because it never gets the 60, and it gets the 50 and it is paid out, it gives out or it doesn't receive -- the same thing -- $110,000.

THE COURT: Let'a take one item first because I'm a little slow. They owed 60,000, Cadgie Tayloi owed 60,000 as revealed in the prospectus.

MR. SAGOR: Right.

THE COURT: Forget the odd numbers. They paid them 50.

MR. SAGOR: Right.

THE COURT: So they paid them.

MR. SAGOR: Then they should have gotten $200,000.

THE COURT: Who should have gotten that?

MR. SAGOR: Cadgie Taylor.

THE COURT: How much did they get from Feis?

MR. SAGOR: Let me explain. They get net proceeds --

THE COURT: Let me stop you. I will never understand it. Feis is supposed to give $200,000 to Cadgie Taylor, right?

MR. SAGOR: Yes.

THE COURT: Did they give it?

MR. SAGOR: No.

THE COURT: How much did they give?

MR. SAGOR: They got 154,000.

THE COURT: And did Feis collect 202,000?

MR. SAGOR: Yes, over that.

THE COURT: What happened to the balance?

MR. SAGOR: That is interesting. 31,000 went to Feis.

THE COURT: Naturally. They are entitled to that.

MR. SAGOR: There is 16,000 extra that was

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put in fo[illegible]2. The 46,000 significantly came from one of Ridland's subsi[illegible]aries, Sierra Reef. We will show that is a subsidiary. In other words, they apparently purchased -- either purchased the stock or added money to fill up that account to sell those shares, and that came in on November 17, 1970.

THE COURT: You are confusing me terribly. To me it's a simple thing if it can be unraveled. They were supposed to get -- Feis was supposed to get 202,000.

MR. SAGOR: Right.

THE COURT: Actually you say Feis got 218,000?

MR. SAGOR: The whole account added up to 262,000. In that account should have been 250,0[illegible] representing all the shares -- all the money coming in on the issue. But it came out that 296,000 came into the account. Now, the disposition of the funds --

THE COURT: Where did the other 12 come from?

MR. SAGOR: The other 12 came because they added an extra amount. I don't know where the other 12 came from.

THE COURT: That is without selling stock?

MR. SAGOR: That is right. They apparently seemed to put it in and take it out. At any rate, the

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disposition of those funds, we could trace 31,000 goes into Feis's account, we could trace --

THE COURT: Ten goes to Kelly --

MR. SAGOR: No. The ten will come from Feis's account to Kelly. That's not in there. And then you could trace approximately 154,000 goes into Sierra -- I mean, rather, Cadgie.

MR. BRILL: Now we have a --

THE COURT: Don't interrupt.

MR. SAGOR: $60,000 doesn't go any place. That should have gone to Sierra.

THE COURT: Where did it stay?

MR. SAGOR: It leaves the manufacturer's account.

THE COURT: Where does it go?

MR. SAGOR: It's not deposited.

THE COURT: Who is it made to?

MR. SAGOR: It is made out to Sierra Silver.

MR. KLEIN: The check?

MR. SAGOR: Yes, the check. We don't have the check. We have the certified copy of the voucher.

THE COURT: Sierra could have owed somebody the 60,000 and turned it over.

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MR. SAGOR: It would have to be deposited in its corporate bank account.

THE COURT: Not necessarily.

MR. SAGOR: It is not deposited in the corporate bank account. It is as simple as that.

THE COURT: It is not that simple. You can take a corporate check and endorse it.

MR. SAGOR: That's right. That is one of the government's points in this case, that that check came endorsed that was taken out illegally, by the way, from the escrow account on October 23rd before all the funds were in in violation of the agreement, it was taken out on October 23rd, it was a certified check and one belief that I have is that that was cashed, made into cash and that proceeds could have been one of the sources of the $40,000 payment made to Kelly, Andrews and Bradley on November 5th.

MR. KLEIN: It was 60,081?

MR. SAGOR: That is right. We don't have the check. The only one having the check is Mr. Feis.

THE COURT: And your point is it never got into the Sierra bank account?

MR. SAGOR: That's right; absolute unavailability of fund to mal a cash payoff in this case.

THE COURT: I can see that.

But you have to explain it very carefully with this jury. They are not going to understand it.

MR. BRILL: I wish he would explain it to me, because I don't understand it. I have heard a series of figures added up that come to approximately $200,000 that went into --

MR. SAGOR: I'll get my accounting sheets and show you.

THE COURT: This much I understand. Forget about the rest of it for the moment. We will see: As I understand it, the prospectus says that Cadgie Taylor owed Sierra Silver some $60,000-odd which would be paid out of the proceeds of the underwriting. Regardless of what date it is, forget that it is before or after, a check is drawn for the exact amount shown in the underwriting, which in normal course one would expect to be deposited in the bank account of Sierra Silver. The check is shown as coming out, but there is nothing about going in, and it is about the time when the alleged Feis

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$40,000 is generated into cash.

MR. BRILL: That is one view.

THE COURT: That is what?

MR. BRILL: That is one view.

THE COURT: You can attack it. You can bring in the check. You can do anything. I am not going to stop you from testing it.

MR. KLEIN: What is missing? The check?

MR. BRILL: He says he has the certification.

MR. SAGOR: I have the certification, but I don't have the check. The check goes to Feis.

MR. MARCUS: Which check?

MR. SAGOR: The check physically. Manufacturers makes out a certified check to Sierra Silver to the name of the person on the account.

THE COURT: Which goes to the escrow account in the bank?

MR. BRILL: No. It goes to Sierra.

MR. SAGOR: No. Feis may have kept the check, possibly.

MR. MARCUS: You are saying that --

MR. SAGOR: Just a minute. I'll explain it to you. Hold on a second.

What happens is that a person who has control

of the escrow account, Mr. Feis, goes to the bank. He asks to get a certified check. We have that voucher for the certified check.

THE COURT: But where is the cancelled check?

MR. SAGOR: It comes back to the escrow account.

THE COURT: And who has the books and records of the escrow account?

MR. SAGOR: The bank. They do not have Recordaks of checks.

THE COURT: Not Recordaks. Where are the originals of the checks? They should have gone back to them too.

MR. SAGOR: They don't have that. I have the certification voucher. That is all I could get my hands on. I would love to get my hands on --

MR. KLEIN: Do you say that the $60,381 check came out of the escrow account?

MR. SAGOR: That's right.

MR. MARCUS: The escrow account of Manufacturers?

MR. SAGOR: That's right.

MR. MARCUS: And you are saying that check

drawn to Sierra Silver was given to Feis and from there on we know nothing about it?

THE COURT: He didn't say that at all. He said that if you match the incoming, the deposit in the Sierra Silver account, although the check is shown by the certification records to be made out by Sierra Silver, the payee, there is no record that they received it. That is what he is saying. There is no confusion about that.

MR. KLEIN: And you are questioning the source for the $40,000?

MR. SAGOR: One of the sources for the $40,000.

MR. KLEIN: Which is the source? Aren't we entitled to specificity at this point?

THE COURT: I don't know.

MR. KLEIN: He sais it is one of the sources. 63,000 is greater than 40,000. If he says that is the source, fine. Then he is stuck with it. If he says that is one of the sources, then I don't know what he means. If he has another source --

THE COURT: Cases are tried every year involving bribery and related offenses where an attempt isn't even made to show the source because the government can't show it. That's just not a defect.

MR. BRILL: That is a different kind of a situation.

MR. KLEIN: We have a witness who says here's a bribe. We don't have anything connected with Mr. Ridland.

MR. SAGOR: There will be some more testimony showing Mr. Ridland is the bag man in this case.

THE COURT: That is what he should tell us.

MR. SAGOR: I think Widlitz will testify that Steel will tell him at some point that Widlitz --

THE COURT: Then I have a suggestion to make. I say put on Widlitz first and then the bank.

MR. SAGOR: He is not here yet. But this --

THE COURT: What time is he due?

MR. SAGOR: He is coming at 3 o'clock. But this has nothing to do with the $60,000. Widlitz will testify that on October 1st Steel tells him that Ridland is expected to bring the $40,000 cash. That is October 1st, which is some evidence that Ridland is the source of the money.

THE COURT: I'll tell you what we'll do. If you are waiting to Widlitz, we will put these bank witnesses on and mark these things for identification so

that we get the authenticity part and in the course of business done and all that, and after Widlitz you can introduce them in evidence if I feel there is a connection.

MR. SAGOR: But these documents, the records of Sierra Silver, have another function, and that function is to show 35,000 going into Ridland's account on November 3, 1970, that he profited from the public offering of this stock. Feis profited; he got 31,000 in commissions. Ridland profited; his company gets 154,000, and he personally gets advantage of a check for $35,000. That's motive here of why he would want to do this issuing and why he would be willing to b epart of a bribe, so-called, of $40,000.

MR. BRILL: Motive is not an element of these offences.

THE COURT: Motive isnot a necessary element, but you may always prove motive.

MR. KLEIN: You are forcing me to put Ridland on the stand.

THE COURT: That frequently happens in a criminal case.

MR. KLEIN: On the other hand, if it's a crime, if he can't justify it, it would be a crime not in the Southern District of New York but out in Montana, or where

ever the check was drawn.

THE COURT: It is not a question of a crime. It is a question of intent in committing a so-called alleged fraud. I wasn't there and the government is entitled to prove the fraud circumstantially as well as by direct evidence, especially when you've attacked the credibility and the bias of these witnesses so greatly.

MR. KLEIN: What has that got to do with these checks? It has nothing to do with these witnesses.

THE COURT: I am not going to argue with you. If you don't see it, it is obvious, I can't help you.

All right, let's get on then, gentlemen, if there is nothing else.

(In open court; jury present)

MR. SAGOR: The government calls George D'Angelo.

THE COURT: Again we have been delayed because we have had some legal matters to discuss since 2 o'clock.

* * *

THE COURT: They don't hear a word you are saying. Speak up and face them. Repeat what you just said.

THE WITNESS: First National Bank of Arizona, in Phoenix, Arizona.

Q Miss Block, pursuant to a subpoena, have you brought with you certain bank records?

A Yes, I have.

Q How long have you been with the First National Bank of Arizona?

A Seven years.

Q And in what capacity?

A Well, I started as teller and now I am customer's service representative.

Q I show you what is now being marked Government' Exhibit 39 -- excuse me -- Government's Exhibit 40 for identification.

(Government's Exhibit 40 marked for identification.)

THE COURT: Let me see it first, Mr. Hughes.

(Handing to Court.)

Q Can you identify Government's Exhibit 40 for identification?

A Yes. It's a corporation signature card on Cadgie Taylor Company.

Q And is that kept by the bank in the ordinary course of the bank's business?

A Yes.

Q And is the ordinary course of the banks business to keep such a signature card?

A Yes.

Q Is that signed by G. C. Ridland in part?

A Yes, it is.

Q I show you what is now being marked 40-A for identification.

(Government's Exhibit 40-A marked for identification.)

Q Can you identify 40-A for identification?

A They are bank statements on the same corporation, Cadgie Taylor.

THE COURT: For what period?

THE WITNESS: From September of '70 to November of 1970.

THE COURT: Thank you.

Q What is the last date, Miss Block?

A The last date on the statement is 11/24/70.

Q And are those made by the bank in the ordinary course of the bank's business?

A Yes, they are.

Q Is it the ordinary course of the bank's business to keep such statements?

A Yes.

Q Now I show you what is being marked 40-B for identification.

(Government's Exhibit 40-B marked for identification.)

Q Can you identify Government's Exhibit 40-B for identification?

A A deposit slip on Cadgie Taylor Company.

Q And are they associated with that account?

A Yes.

Q And are they made by the bank in the ordinary course of the bank's business?

A Yes.

Q Is it the ordinary course of the bank's business to make such deposit slips?

A Yes.

Q With respect to the bank statements, 40A for identification, how many columns do your deposits appear in?

A One column.

Q To the dotted line to the right, are those columns only for withdrawals?

A The three columns in the center, yes, they are.

MR. SAGOR: Your Honor, we offer 40. I know your Honor wants us to hold back, but perhaps on authenticity grounds we can take them in segments or perhaps do all of the record at First National.

THE COURT: I think in a case like this you ought to mark these for identification. I will ask counsel whether they have any question of authenticity, in which event I will allow them to conduct a voir dire. Then let's leave them for identification until we can piece the strands together and discuss them intelligently.

MR. SAGOR: What I would like to do at some point is substitute true copies for the record. Miss Block informs me her bank would like to get these originals back.

MR. KLEIN: No.

THE COURT: In other words, a photostat will be put in for an original?

MR. SAGOR: Yes.

MR. SAGOR: May this be marked 41 for identification?

(Government's Exhibit 41 was marked for identification)

MR. SAGOR: May this be marked 41A for identification?

(Government's Exhibit 41A was marked for identification)

MR. SAGOR: And may this be marked 41B for identification?

(Government's Exhibit 41B was marked for identification)

Q Miss Block, would you identify -- can you identify 41 for identification?

A The signature card on Sierra Silver Mining Company.

MR. KLEIN: I didn't hear you.

THE WITNESS: The signature card on Sierra Silver Mining Company

Does that purport to be signed by one G. C. Richland?

A Yes.

Q And is that kept by the bank in the ordinary

course of its business?

A Yes.

Q Is it the ordinary course of the bank's business to keep such signature care?

A Yes.

Q And what is the number of that account?

A 678-5155.

Q And have you produced certain original bank statements in connection with No. 5155?

A Yes.

Q And is that 41A for identification?

A Yes.

Q And are those kept by the bank in the ordinary course of the bank business?

A Yes.

Q And is it the ordinary course of the bank's business to keep such statements?

A Yes.

Q The originals of those statements are sent to whom?

A The originals of the statement are sent to the customer.

Q And the customer listed on the account card?

A Sierra Silver Company.

Q And the period covered by 41A for identification is what?

A October 6, 1970, through December 30, 1970.

MR. KLEIN: Did you say October 6, 1970?

THE WITNESS: Yes.

MR. KLEIN: Until when?

THE WITNESS: December 30.

Q Can you identify Government's Exhibit 41B for identification?

A Those are deposit slips on the Sierra Silver Mining Company.

Q Some but not all the deposit slips?

A No.

Q Are they kept by the bank in the ordinary course of the bank's business?

A Yes.

Q Is it the ordinary course of the bank's business to keep such deposit slips?

A Yes.

Q I show you what is now being marked 42 for identification.

(Government's Exhibit 42 was marked for identification)

MR. SAGOR: May this be marked 42A for

identification?

(Government's Exhibit 42A was marked for identification)

MR. SAGOR: And this 42B for identification.

(Government's Exhibit 42B was marked for identification)

Q Can you identify 42 for identification?

A The signature care on G. Carman Ridland.

Q And is that for account 670-5017?

A Yes.

Q And is that a personal checking account?

A Yes.

Q Is that signature card kept in the ordinary course of the bank's business?

A Yes.

Q Is it the ordinary course of the bank's business to keep such a signature card?

A Yes.

Q Have you also brought with you and marked 42A for identification certain monthly bank statements of that account?

A Yes.

Q And is 42A kept by the bank in the ordinary course of the bank business?

A Yes.

Q Is it the ordinary course of the bank's business to keep such monthly bank statements?

A Yes.

Q And also with respect to deposit slips, would your answers be the same as to the bank's procedure in keeping those deposit slips?

A Yes.

Q And those are marked 42 --

A B.

Q R. And those are some but not all the deposit slips associated with that account?

A Yes.

THE COURT: Do these deposit slips show the deposit of checks or cash?

A The way it is listed here, it would show as check.

THE COURT: Both of them?

THE WITNESS: On these two, yes.

MR. KLEIN: What is the number.

THE WITNESS: 42B.

Q Miss Block, when you get a moment, would you look at 41B for identification. Those are the deposit slips associated with Sierra Silver?

A Yes.

Q And do you see a deposit slip which is dated October 31, 1970?

A Yes.

Q And that was deposited in the bank on what date?

A November 2nd.

Q Without telling us the amount of that deposit at this time, would you tell us whether the nature of that deposit is check or currency?

A It's listed as currency.

Q And is there an ABA number on that deposit slip?

A No.

Q What is an ABA number?

A An ABA number is a number referring otthe bank which that deposit was made out or the check would be drawn against on any account.

Q When there is a check deposited, is there often an ABA number next to that check?

A The check is to be listed by the ABA number.

THE COURT: I notice on 42B for identification, do you have any number there, what you said was a check?

* * *

available. That is just a footnote to all this.

These bank records from Manufacturers show the 60,381 going out, it shows when the deposits were made to the account, it shows the commission money going out of the account into Feis' own account, and then we see the commission money taken from Feis' own account, paid to Kelly, Andrews & Bradley by certified check, and it also shows the deposit from a Sierra subisdiary company from the Royal Bank in Canada, Vancouver, into the account on November 17th.

THE COURT: That is that 16,000?

MR. SAGOR: Yes, 16,000. But it is discounted a little bit.

THE COURT: Will you be able to explain that to the jury?

MR. SAGOR: Sure. Or Mr. Ridland will explain it when he takes the stand. Sure.

I can show your Honor --

MR. BRILL: Hasn't there been a change in the law, Judge? I heard Mr. Sagor make this kind of comment about twelve times.

THE COURT: It doesn't affect me at all.

MR. BRILL: I just wondered, because I may be behind on the law.

THE COURT: You are not behind on the law.

MR. SAGOR: You are not behind --

THE COURT: He may have had a private communication with Mr. Klein. I don't know. Maybe he reads his mind. There is a little mental telepathy going on.

MR. SAGOR: I think we can take them one at a time.

MR. BRILL: Can I say that I am even more muddled now than Mr. Sagor succeeded in muddling me yesterday?

THE COURT: He may muddle the jury into an acquittal. It is very possible, very possible.

MR. BRILL: To which I think the defendants are entitled, by the way.

THE COURT: I don't know about that. They may get it, whether they are entitled or not. I am not going to judge that. I am not the jury.

MR. BRILL: Right.

MR. SAGOR: It will be a rare day that Mr. Brill is advising the prosecution to help them in their case. I say that with due respect.

MR. BRILL: I know, and with a glint in your eye.

MR. SAGOR: Okay.

Now let's look at the Cadgie Taylor company. That is this bank account. Cadgie Taylor has deposits

to 19
throughout September of $75.77; October, 89.42 on these dates, and on this date (indicating) it has --

MR. BRILL: What date is that?

MR. SAGOR: October 26th, '70. Now, on this date, significantly, there is $2.54.

THE COURT: October 29, '70 there is a balance of $2.54 in the account.

MR. SAGOR: Then he gets instant credit. Irrelevant. I am not focusing on that. He gets instant credit for this (indicating), to make it by his fiscal end of the year, even though the money hasn't been drawn really on Manufacturers until 11/2 1970.

THE COURT: What has that got to do with the case?

MR. SAGOR: Nothing.

Now, as soon as that money is put in, as soon as that money is put in, part is checked out. You remember that money never goes to Sierra Silver, as it should, and it is in none of the bank accounts that Mr. Ridland has produced. In other words, it is not in any of the three bank accounts that Ridland has. But I am not putting on the documents that he introduced.

At any rate, 35,000 is immediately taken out of Caddie Taylor and put in Ridland's personal account, and

is it

50,000 is taken out and goes -- it may not be taken out; this may go elsewhere. But I'll assume for the moment that it goes to the company in the form of a cash deposit. The dates are different. The deposit is the 2nd and leaves that account on the 3rd. But I won't get into that.

At any rate, let's assume arguendo that it goes in there from Cadgie Taylor. It doesn't matter. If it comes out of Cadgie Taylor and goes to a nonexistent place, that is worse. If this cash is not from Cadgie Taylor, that is worse. I am assuming the best for Ridland at the moment, that he has gotten the benefit of $35,000 in personal money from the company, and also his corporation, which he owns fifty per cent worth, gets $50,000 from Cadgie Taylor, showing a great motivation here and the availability of funds.

MR. KLEIN: Who is this check made payable to, the 50,000?

MR. SAGOR: He don't have thechecks. He claims he doesn't have the checks.

MR. BRILL: I just hope he argues all this to the jury.

MR. SAGOR: Okay. This will be my problem.

MR. KLEIN: What is the date of this? 11/3?

MR. SAGOR: That's right.

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We can also see money going from Sierra Silver immediately after it comes in from Cadgie Taylor, being checked out. But that's not important. We also see money from Mr. Ridland's personal account going into Sierra Silver, which is not important either.

THE COURT: Then don't put in anything unimportant.

MR. SAGOR: That is to his benefit.

At any rate, all these banking statements -- you could see the importance of the special account and we can see Cadgie Taylor, the 60,000 did not come into Cadgie Taylor, and Ridland gets immediate use of the funds of the company, including his personal account.

MR. KLEIN: What happened when it went into his personal account? What happened to it then? You show a deposit of $35,000 into his personal account.

MR. SAGOR: Yes.

MR. KLEIN: What happened to that 35,000?

MR. SAGOR: He used it.

THE COURT: How do you know?

MR. KLEIN: Do you show a withdrawal?

MR. SAGOR: There is a withdrawal going back into Sierra Silver of 15,000. That is not his company. He is not allowed to take Cadgie funds to use for his own corpora-

jr 13 1500

tion.

THE COURT: That confuses the issue. I won't allow this 35,000 in. The other stuff I think is quite relevant.

MR. SAGOR: You mean the 15,000.

THE COURT: The 35.

MR. SAGOR: No. 35,000 goes to his personal account. I'll leave it there.

THE COURT: How do you know it essn't for a corporate purpose?

MR. SAGOR: How could he take a check from this corporation? He gets immediate use of the money. Even so, your Honor, the fact is that he is taking money from a corporate account and putting it in a personal account, $35,000.

MR. FLEIT: That is not part of this case.

MR. SAGOR: It is part of this case.

MR. FLEIT: This case is that there was a $40,000 cash payoff. That is the only case here.

MR. SAGOR: Your Honor, this is within the period of the conspiracy. There is substantial evidence of misappropriation and availability of funds.

MR. FLEIT: This not a case of misappropriation, your Honor.

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THE COURT: The problem I have is that based on the date, it is a November 3rd withdrawal, and the testimony was that the cash was paid by November 5th -- wasn't it?

MR. SAGOR: Absolutely.

THE COURT: Whether that is prejudicial without a connection. This is my problem. Because you may quite properly offer it for another purpose and it may turn out to be extremely prejudicial on an assumption, a guess, a suspicion.

MR. SAGOR: I'm not saying that that's necessarily the payoff money. I'm showing the use and availability of funds.

MR.KLEIN: Why don't you point to the payoff money?

MR. SAGOR: How can I point to the payoff money?

MR. KLEIN: There is no payoff money.

MR. SAGOR: Argue that to the jury.

MR. KLEIN: You are going to confuse them. Talk about red herrings. These are all red herrings here. You are asking the jury to conjecture that because the man happends to have money in his pocket on a certain day in Las Vegas --

THE COURT: I am going to allow that generally,

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the $60,000 check, that it wasn't deposited in the Cadgie Taylor account. That seems to me quite a useful piece of evidence. Whether it is accepted or not is for the jury. I am troubled a little bit, not much but a little bit, about the 35,000 --

MR. SAGOR: Going into --

THE COURT: -- because it might look as if he is stealing the money out of there.

MR. BELL: He just said that it went to Sierra Silver, and Sierra Silver is a creditor of Cadgie Taylor.

THE COURT: It wasn't revealed in the prospectus. They only showed 60,000. This is in addition.

MR. SAGOR: This is even worse. You see, 60,000 doesn't show up in the company. Now 50,000 is going from Cadgie Taylor. So Cadgie Taylor is giving to Sierra Silver 110,000.

THE COURT: That is the part.

MR. KLEIN: I thought this case dealt with the $40,000 cash payoff, undisclosed and unauthorized commission.

MR. SAGOR: No. As I've indicated in the bill of particulars, it deals with false statements in the prospectus. There are several.

MR. KLEIN: The bill of particulars is not an indictment. The grand jury decides, not the district attorney.

THE COURT: That doesn't happen to be the law in this circuit. In a conspiracy you don't have to show the means in any event. So, if you show some means, it doesn't --

MR. KLEIN: He is showing separate acts.

THE COURT: That I am considering overnight, what to do about that. I haven't made up my mind about that yet.

MR. KLEIN: The jury can find that there was no $40,000 payoff and I am sure they are not going to be able to show it, but the jury can properly find us guilty on other things: beyond the 120-day deal, taking 35,000 out when they are only supposed to take 60,000 out, all other things besides.

We can be found guilty on any one of a number of things. In other words, if the jury finds that there is no $40,000 cash payoff, but if they find any one of these other items that you are putting in, that it was sold beyond 120 days, that it wasn't completely escrow or that Mr. Ridland took out more cash than was disclosed, they can be found guilty on that.

The main thing we are defending on, and we are entitled to know what the impact and what the thrust of the accusation is, on that one. We can be completely innocent and be convicted of other things.

MR. SAGOR: You haven't read the government's requests to charge. They are very limited.

MR. KLEIN: How does that change what I say?

THE COURT: The issue is -- I will have to think about it a little more -- whether it is evidentiary only.

I am convinced it is proper evidence, that's for sure. But whether you are entitled to a charge there if they don't find that there was any $40,000 payment they must acquit, that is what I want to think about.

MR. SAGOR: The thing that is clear from Manor and this witness' testimony is that if you sell with a prospectus which has a material false statement, that is a crime.

THE COURT: That is not the issue here. The question is whether they had adequate notice. I don't know who drew this indictment.

MR. SAGOR: Who had?

THE COURT: The defendants. It is a very poor indictment.

MR. BRILL: They spent a lot of time investigating it, Judge.

MR. SAGOR: That is irrelevant. Why do you get into that now?

MR. BRILL: I hear more irrelevancies from my good friend here.

MR. SAGOR: You made a statement up there, and I may want to prove it, about the fact that this company couldn't do business because the government investigated it. You state for the record that's what you believe?

* * *

MR. SAGOR: I read Ruston's book, too.

THE COURT: I am getting into the vernacular because I don't know what else to do with you. What else do you want?

MR. SAGOR: I think your Honor understands it as I understand it. I thought your language I don't think was clear. But as long as we understand it will be made clear now.

THE COURT: It is not clear yet how I will charge on the question of whether if they don't find the $40,000 was received under the circumstances related by the witnesses they can still convict the defendants. That I haven't determined yet. I want you to know that.

MR. SAGOR: I understand that. If your Honor reads the cited cases it will be clear.

THE COURT: I have read the cited cases, I have thought about it. I will think about it more. Don't say I misled you at this point. I may charge your way at the end but I haven't made up my mind.

MR. SAGOR: I understand that.

THE COURT: In any event, I have allowed the evidence in. That is admissible.

MR. BRILL: We are going to move to strike that.

THE COURT: There is something I wish you would

withdraw on your own. The $60,000 thing I am quite satisfied is all right with one caveat, and that is where you have some proof that this is the only bank account that Cadgie Taylor had, because if you don't how do you know where it went? It might have gone to another bank.

MR. SAGOR: I will tell you what my proof is. We have the statement filed with the SEC --

THE COURT: Listing the bank accounts.

MR. SAGOR: The one bank account.

THE COURT: That is enough.

MR. SAGOR: Two others. Mr. Ridland has produced the Cadgie Taylor statements. They do not appear on those statements. Obviously if they did appear I would, as a Brady matter, allow that to go in. They do not appear.

THE COURT: This is what he produced. So that satisfied. What I am not satisfied about is the withdrawal of the $35,000 by Mr. Ridland. I am afraid it's prejudicial and unless you know what it was for, it seems to me it is gilding the lily.

MR. SAGOR: There is no basis in the prospectus for Ridland to have that money from the company. All I am showing is --

THE COURT: You don't know what it is. Suppose he took the money because he wanted to buy another claim, which

the prospectus said they would have to do if it was a successful underwriting, and he wanted to do it in his own name for some reason, not the company's name.

MR. SAGOR: The futures have to be paid for by corporate funds. There is no basis to take those funds. I can put in the 10K --

THE COURT: We are talking about buying a land claim or something like that.

MR. SAGOR: I will put in the 10K for 1971, which will show the use of the funds of the company. There will be no reference in there to any loans made to Dr. Ridland or any acquisition of any other land.

THE COURT: That is what I don't want to confuse the jury about.

MR. SAGOR: I have enough, your Honor.

THE COURT: You are too persistent. You almost convinced me now. I am not going to do it because I think it is prejudicial. There is no connection. I don't know what it's for. There is nothing which says it came directly from the proceeds of this. It is from the company.

MR. SAGOR: It is directly from the proceeds.

THE COURT: Because he had no balance?

MR. SAGOR: Absolutely. There is $2.54 in that account.

THE COURT: Then you have to relate it back that at the time they made this prospectus they understand it was going to be done. There are a lot of complications.

MR. SAGOR: There is a continuing obligation here on the part --

THE COURT: That is enough.

MR. SAGOR: What I am doing with the next witness --

THE COURT: I am telling you now I won't allow the $35,000 taken out by Ridland. Don't touch it.

MR. SAGOR: All right.

THE COURT: The other part I do go along with you on showing the source of the cash and on showing that the $60,000 was not deposited in the Cadgie Taylor account.

MR. SAGOR: So the accounts we put in would be the Sierra Silver and Cadgie Taylor and Manufacturers, leaving out Ridland's personal account.

MR. BRILL: Does that include the Feis account as well?

MR. SAGOR: That is in already.

MR. BRILL: I will move to strike that, Judge.

THE COURT: You can move whatever you want to.

MR. SAGOR: I have a brief witness with the quotation, the last quotation, on Cadgie Taylor in November.

That is the last time it was sold. That relates to the evidence --

MR. KLEIN: What date?

MR. SAGOR: November 7, 1973.

MR. KLEIN: They are not in the mining business now. They are in the hotel business.

THE COURT: I won't allow it. It is too remote.

MR. SAGOR: That was just an answer to putting in the price of silver.

THE COURT: I understand. The price of silver is different. Let me explain to you I am not an irrational person. The price of silver I permitted in on the theory that it's the type of stock where an intelligent and prudent investor who wanted to speculate might well consider silver is a volatle commodity that might well go up beyond what the books show. It has nothing whatever to do with the ultimate decline of the stock three years later.

MR. SAGOR: I don't think your Honor is ever irrational.

THE COURT: It is not irrational. One deals with intent and the other after the event.

MR. MARCUS: Just so I understand, on the Feis bank accounts, you are not going to strike them from the record, you will allow them to remain in evidence.

THE COURT: No.

MR. MARCUS: For the record I would like to say they are irrelevant and go to charges which are not contained in the indictment and, if anything, go to charges which the prosecution is attempting to add at this point in application of the indictment.

THE COURT: I didn't say yet I am permitting them to prove additional charges, which you call them, which are other means in the conspiracy. I said I would permit them on the evidentiary basis that they are an integral part of the scheme, at least so claimed by the Government. That is different.

The other I am reserving on.

MR. KLEIN: Perhaps you overlooked something. I am not too clear myself. Yesterday you said you would take objections as to authenticity as to certain documents but you reserved a decision on objections to them.

THE COURT: That is correct.

MR. KLEIN: Is that still hanging?

THE COURT: That is what I am deciding now, that I am going to allow them in, but I am not allowing in the Ridland $35,000. I have excluded that. I have ruled the rest of it comes in for the reasons I have stated already.

MR. BRILL: But not binding upon Steel.

THE COURT: I wouldn't say that on these. It is part of the conspiracy.

MR. BRILL: All the SEC documents?

THE COURT: He is talking about the bank statements. The bank statements are in furtherance of the conspiracy. You can except to that.

MR.BRILL: At another time I will specifically refer in a motion to my objections and to strike those particular exhibits.

THE COURT: I should do that and I may reconsider it before I charge. I agree with that.

MR. KLEIN: Was that $35,000 --

MR. BRILL: That is out.

THE COURT: It is out of the case. I won't let it in.

MR. SAGOR: The deposit of it.

THE COURT: The fact -- put it this way: Whatever documents you have that show $35,000 went to Mr. Ridland, I am not allowing in evidence.

(In open court: jury present)

W I L I A M T O O M E Y resumed.

MR. SAGOR: I think we are on cross-examination, your Honor. I have asked my last question at this time.

MR. BRILL: I have no questions to Mr. Toomey, your Honor.

CROSS-EXAMINATION

BY MR. KLEIN:

Q Mr. Toomey, I understand you say that the purpose of the Securities and Exchange Commission's function in looking at a prospectus is to determine whether adequate and reasonable disclosure has been made in a prospectus under the circumstances?

A I think that's right.

Q Did there come a time when the prospectus in this case was finally approved by the Securities and Exchange Commission?

A There did, yes.

Q And that meant, did it not, that the commission was convinced, it felt, that the prospectus had made an adequate and reasonable disclosure of the risks and all of the pertinent factors under the circumstances?

A May I answer that a little differently?

Q Sure.

* * *

gurll Toomey-cross

time subsequent to its date."

Do you recall that, Mr. Toomey?

A Yes.

Q Sometimes there is a passage of time and extrinsic developments take place and if such developments are material you say that the company then should amend the prospectus to reflect such material changes?

A That is correct.

Q Suppose a salesman employed by the dealer gave a widow on the telephone a sales pitch in which he made fraudulent statements, he alone made fraudulent misrepresentations that the company never knew about, you wouldn't say that the company, not knowing about it, would be under any obligation to amend the prospectus, would you?

MR. SAGOR: Objection.

THE COURT: I will allow that.

A I don't think the two are related, Mr. Klein.

Q Why not?

A The activities of individuals selling the security are not within the control of most companies.

Q Mr. Toomey, would you please look at the prospectus and look at the part you read at the bottom of the cover page, page 1, the front, the bottom, and see

if it says anywhere there that the funds must be deposited within 120 days, that specific language.

A In so many words?

Q Yes.

A They do not appear in so many words.

Q On page 1, sir -- but it does appear in specific words thatthe issue must be sold within 120 days, is that right?

A That's correct.

Q That is specific. But so far as the deposit of funds, there is no time limit mentioned. Is there anything said there about "paid for"? Does that appear on Exhibit 1?

MR. KLEIN: No, sir. I will ask Mr. Toomey.

Q Mr. Toomey, do you see the words "paid for"?

A On page 1?

Q Yes.

A No.

Q So the only time you see 120 days is to sell, you don't see to be paid for or deposited?

MR. SAGOR: As to Exhibit 1 I have no objection.

MR. KLEIN: That is all I am talking about.

MR. SAGOR: As long as the question is clear

it has reference to page 1of Exhibit 1, I have no objection.

THE COURT: That is what it is.

Q Am I correct, Mr. Toomey, that page 1 of the prospectus, Exhibit 1, sets a time limit for the sale of the issue but does not set any time limit for the payment or deposit of the funds?

MR. SAGOR: If he said the words don't specifically appear there, they don't.

THE COURT: Let me see the wording.

(Pause)

BY MR.KLEIN:

Q Mr. Toomey, am I correct in understanding that the language of the last paragraph on page 1 of the prospectus, which is Exhibit 1, sets forth the time limit within which to sell the stock in specific terms but does not set forth any specific time limit within which the purchase price must be paid or the funds must be deposited in the special account? Does it say that specifically?

A I think the paragraph we are referring to does not really set any limits at all. It is a characterization of the underwriting efforts in shorthand, so to speak.

Q Yes. Except that it does set one limit --

MR. SAGOR: Could he finish his answer?

Q I thought you finished it. I'm sorry.

A I think it is a brief general description of the underwriting arrangements, which does not purport to contain the terms.

Q Right. This was approved by your office, wasn't it?

A Absolutely.

Q To be submitted to the public?

A Absolutely.

Q To the public, who is supposed to get one of these. Each one gets one of these, is that right?

A That is right.

Q And this language was approved by your office?

A That is correct.

Q And it does not say in any words at all that payment must be made or the funds deposited within the time limit, is that correct?

A That do not appear here.

Q Right. Now let's turnto page 13, where it says "Underwriting". And do you see anything in there that states that payment must be made within any specified time or the funds must be deposited in a special account within any specified time?

A Yes, I do.

Q Where do you see that, sir?

A In the reference in the last paragraph of the section, page 14.

Q The last paragraph?

A The last paragraph of the underwriting section, which in my copy is page 14.

Q It would be the part that starts with "The foregoing does not purport to be a complete statement"?

A That is correct.

Q "The foregoing does not purport to be a complete statement of the terms of the underwriting agreement to which reference is hereby made."

That is what you just said when I asked you about the first page?

A That is correct.

Q But is there any reference in here as to a limit within which the purchase price must be paid or the funds deposited?

A Specifically, no.

Q Do I understand that a registration statement consists of many documents, a number of documents?

A That is true.

Q Of which the prospectus, Exhibit 1, is only one of the documents?

A That is true.

Q And which document of all of the registration statement is the one that is sent to the public by the underwriter?

A The prospectus.

Q The prospectus. And does anybody send the other statements to the public?

A Not normally.

* * *

that she wouldn't get mugged on the streets of New York?

A Yes, I did.

MR. KLEIN: Is that the purpose? I don't know why Mr. Sagor resents it.

MR. SAGOR: I think it was an unfair and low implication.

MR. KLEIN: I resent that, your Honor. I was talking about in the witness room here.

MR. SAGOR: You should have made it clear.

MR. KLEIN: Two potential witnesses in a case. I am entitled to inquire whether they discussed their testimony.

THE COURT: You are entitled to inquire and you got your answer.

MR. KLEIN: But there was no insinuation and I don't know how offensive the prosecutor is getting.

THE COURT: All right. Everybody apologizes.

Q Do you remember Mr. Klein asking you questions, did the words "and paid for" appear on the front of the prospectus?

A Yes.

Q Do you remember his questions?

A Yes.

Q [illegible]words"and paid for" do not appear on the front of the prospectus. In fact, the only word appearing there that we are interested in at the moment is the word "sold" is that correct?

A Yes.

Q Tell the members of the jury what it means now in connection with the best efforts all or none, what the word "sold" means.

MR. KLEIN: That is objected to, your Honor.

THE COURT: Yes. I may sustain an objection on that unless you first ask the sources of the information, whether it is a regulation, a rule or what it is. You just can't jump into the air and say you know what something means.

Q Under the practices and procedures of the Securities and Exchange Commission, what is his understanding

THE COURT: No. First he has to establish, in all respects, assuming he is an expert, how he would know that. That is the question first, preliminary. Did it come up? Was there ever a situation?

Q Did the matter ever come up, to your knowledge?

A Yes. Well, perhaps I can -- in the context of some years of examining best efforts underwriting

agreements as a member of the commission staff, of course there aregeneral characteristics that all best efforts agreements have. But essentially, to determine the specific nature of any best efforts agreement, you must refer to the document. There are no rules which govern the kind of best efforts agreement which you may have. This i a contractual matter between the parties.

MR. KLEIN: I prese the objection.

THE COURT: The question is we still are in an area where it ought to be cleared up a little bit. Let's assume you ad "and paid for" --

MR. KLEIN: I object to it because these are not words of art. These are common expressions we use in everyday life. We don't need an interpretation of what those words mean.

THE COURT: Is that all you want to say? Objection overruled.

As I was saying -- please sit down -- "and paid for" can mean either one of two things: Paid for by the customer to the dealer or the underwriter, as the case may e, or paid for out of the account of the underwriter to the company.

Now, neither of those appeared here specifically as "and paid for."

Now, from your experience have you ever run into that question as to what the word "sold by a certain date" means, limited first to the question whether it menas sold by the underwriter and dealers to the public and paid for by them. Do you know of any such interpretation or any case where that has arisen?

THE WITNESS: I know of no case where this has arisen. But the interpretation of the staff of the commission, which is the only one really that I am qualified to give, would be on these facts:

That the securities had to be sold and paid for into the account by the end of 120 days.

THE COURT: Well, is that because it is not a sale merely because somebody accepts on the telephone and says "Send me a confirmation and a prospectus"? Is that the reason? It isn't a sale until he pays for it?

THE WITNESS: I think it is partially that. I think it is perhaps also custom in the underwriting community whereby best efforts offerings are normally sold on a prompt receipt of proceeds basis.

MR. KLEIN: I ask that this be stricken, your Honor.

THE COURT: No.

Let me ask this: If the prospectus is sent

out after its effective date to a customer by a dealer, with a confirmation slip, the customer having said on the telephone before he ever saw the prospectus that he would take the stock, does he or does he not have the right then to refuse to take the stock after reading the prospectus?

THE WITNESS: As a matter of law, in my view, I think he has a technical right to reject the security. I know of no case that supports that proposition.

THE COURT: No. But thepoint then is that until he has paid for IT he has a right to reject it.

THE WITNESS: I think that is correct, yes. As a practical matter that is very rarely done.

BY MR. SAGOR:

Q Mr. Toomey, you answered one of Mr. Klein's questions. You indicated that on page 14 it has the reference to "The foregoing does not purport to be a complete statement of the terms of the underwriting agreement to which reference is hereby made." Do you remember that?

A Yes.

Q And is the underwriting agreement, that word, is that the agreement that you've held up and discussed with us this morning?

A That is the agreement we were speaking of earlier, which I think is the controlling document here.

THE COURT: And is that the paragraph 2.06 that you've been reading?

THE WITNESS: And paragraph 9, your Honor.

THE COURT: And paragraph 9.

Q And does the prospectus, Exhibit 1 in evidence, also say "The foregoing statements are to be deemed qualified in all respects by such reference"? Can you explain what that means?

A Well, I think it is simply an admission really on the part of the staff that the things that we summarize for purposes of brevity of the proepsectus are not always necessarily well summarized andthat important and sometimes critical terms, depending upon later facts, will not appear in the selling document. Otherwise, the selling document would be a 60-page document.

So of course notevery disclosure is found in the prospectus of every term that is important to someone.

Q And is it also true that a copy of the underwriting agreement, that agreement which specifically contains paragraph 2.06 and other paragraphs, is to be kept at the office of the underwriter?

A Yes.

Q And that would be Feis Securities.

A That's correct.

MR. SAGOR: No further questions.

RECROSS-EXAMINATION

BY MR. KLEIN:

Q Don't you consider payment for the stock significant?

A Of course.

Q Right. And I presume they speak English in your department down in Washington and understand English?

A Sometimes I wonder. Yes.

Q And that if you wanted to say -- if you wanted the prospectus to state "Bought and paid for within a certain time limit and deposited in a special account within a certain time limit," you would have required the company to set that forth, is that right?

MR. SAGOR: Objection, your Honor.

THE COURT: I'll allow the question.

A If we had wanted it to state that, it would have stated that.

MR. KLEIN: Thank you. I have no further questions.

THE COURT: Anything else?

* * *

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MR. SAGOR: Very well. 33 for identification is offered.

MR. BRILL: What is 33, again?

THE COURT: It shows that Sierra Empire Mines, Ltd. is a subsidiary of the Sierra Silver Mining Company.

MR. BRILL: Is that the 1971 document?

MR. SAGOR: No. 1970.

THE COURT: 1970. Any objection?

MR. BRILL: Could I just take a quick look at it?

THE COURT: Yes, sure.

MR. BRILL: Yes, I have an objection.

THE COURT: Page one, page two and the first half of page three.

MR. BRILL: I object to it, your Honor. There is no connection to Mr. Steel in respect of 33 for identification.

THE COURT: You have your exception on that.

MR. MARCUS: I would join in that in behalf of Mr. Feis.

MR. KLEIN: I am objecting to it on anyhow.

THE COURT: You object to it on anyhow grounds? What does anyhow mean?

Go ahead.

(Government's Exhibit 33 for identification, received in evidence.)

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MR. SAGOR: 39 is already in. That is Feis' account in Manufacturers.

MR. BRILL: I am going to move to strike the 39 series, your Honor. They have not been connected to Mr. Steel. That is 39, 39-A and 39-B.

THE COU_T: The motion is denied. Your exception is noted.

MR. SAGOR: 40, 40-A and B are offered. That is Cadgie Taylor Corp. at the Arizona Bank.

THE COURT: Any objection?

MR. BRILL: 40, 40-A and 40-B? I respectfully object to those, if your Honor please, on the ground that there has been no connection shown to Mr. Steel and, moreover, so far as this record shows, there is absolutely no indication that they even knew of the existence of such accounts.

MR. MARCUS: I would also join in behalf of Mr. Feis.

THE COURT: All right. What but, Mr. Klein?

MR. KLEIN: If there is any reference to the $35,000 item in this account, I would like to have it excised.

MR. SAGOR: There is 35,000 going out of Cadgie Taylor. We don't know where to.

MR. KLEIN: I don't want the jury to figure that

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is 35,000 that went out.

MR. SAGOR: That the money had been withdrawn from the account.

THEC OURT: I will now admonish the United States Attorney that since I have ruled that the November 3, 1970 deposit of $35,000 in a check by Mr. Ridland is not admissible, there is to be no reference either directly or by way of inference that the $35,000 coming out of the Cadgie Taylor account went to Mr. Ridland.

MR. SAGOR: I won't say it went to Ridland. I just show that the money could be used, that's all. I won't suggest that it is to Ridland, but that it is money in the bank.

MR. KLEIN: That is the only purpose to show this, to connect it up to the $35,000 deposit in Mr. Ridland's personal account.

MR. SAGOR: Much more.

MR. KLEIN: I would respectfully request that that line showing the $35,000 withdrawal be covered and not shown to the jury. It leads only to speculation and innuendo.

THE COURT: No. It is a bank account. As long as nothing is said about it with relation to Ridland.

MR. KLEIN: But it shows that the company may have taken, used that money.

THE COURT: If you needed an exception, I would note it at this point.

I am allowing in evidence 40, 40-A and 40-B.

(Government's Exhibits 40, 40-A and 40-B for identification, received in evidence.)

MR. BRILL: Will your Honor give the jury a limiting instruction with respect to those insofar as Mr. Steel is concerned?

THE COURT: No.

MR. BRILL: I respectfully except.

THE COURT: Yes.

MR. SAGOR: The account for Sierra Silver, 41-A, 41-B and 41 is offered.

MR. BRILL: I object to those, if your Honor please, on behalf of Mr. Steel. There has been a total absence of any proof connected with that account.

THE COURT: Same ruling and the same objection.

MR. KLEIN: Objection on behalf of Mr. Ridland.

MR. BRILL: And I make the same application with respect to a limiting instruction.

THE COURT: Mr. Ridland's counsel will have to state a reason for his own protection on the record. Mr. Steel contends and Mr. Feis that they are not connected with it. That is one type of objection. But Mr. Ridland is in Sierra Silver.

What is your objection to it?

MR. KLEIN: Our contention is that it is not relevant or material to the issue.

THE COURT: All right. You have stated it.

MR. BRILL: May I make the same application with respect to a limiting instruction on behalf of --

THE COURT: With respect to what?

MR. BRILL: A limiting instruction with respect to these documents, 41, 41-A and 41-B on behalf of Mr. Steel.

THE COURT: No, I won't do that, Mr. Brill.

All right. I'll allow in evidence 41, 41-A and 41-B.

(Government's Exhibits 41, 41-A and 41-B for identification, received in evidence.)

THE COURT: Just so I alert you gentlemen, 41-B is the deposit to the Sierra Silver Mining Company of $50,000 in currency. You understand that when you made your objection.

MR. KLEIN: I am going to object to that.

THE COURT: You did object to it. I just want you to know what you are objecting to, that your mind is put on that. And that is the reason you give, relevancy and materiality, is that right?

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MR. KLEIN: It has no connection with this case whatsoever. This is a use of funds by a company after it receives it. It is no part of the fraud charged in this case.

THE COURT: Overruled and admitted.

What next?

MR. SAGOR: We could go with the next witness, your Honor, or briefly show some of this to the jury. I don't think we will at all finish today.

MR. BRILL: Have we dealt with all of the items in the 32 series? There is 32-A, the Amendment No. 1 to the registration statement that was filed in January of 1970. There is certainly no showing of any connection on the part of Mr. Steel to that. There is 32-A-1, which is --

THECOURT: It is in evidence. 32 is in evidence, Exhibit 1 is part of that, and 32-A is in evidence. That is Amendment No. 1. 32-A-1 is in evidence. That is a letter which I made a liminting instruction to the jury with respect to Mr. Steel.

32-B is in evidence. That is Amendment No. 2.

32-B-1 is in evidence. That is also a letter from Mr. Ridland as to which I asked the jury not to consider that against Mr. Steel.

MR. BRILL: With respect to 32-A, your Honor, that

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was filed January 16, 1970, some six months prior to the initial date of the alleged --

THE COURT: I understand that.

MR. BRILL: -- alleged conspiracy. I move to strike it.

THE COURT: No. It changes the terms in the best efforts no return to a best efforts all or none, and that is significant in this case. I won't strike it.

MR. KLEIN: I wanted to object to the reference to the $50,000 item and the $60,381 item on the grounds that argument by the prosecutor in summation that these were funds from which a $40,000 payoff could have been made is highly prejudicial and has no connection whatsoever that there was any payoff of $40,000 and, if so, that it came from here or that it was made by Mr. Ridland.

THE COURT: Overruled.

MR. KLEIN: And that the prejudicial value far outweighs the probative value.

THE COURT: I understand your objection.

Does anybody want to go out to the men's room for a minute or something? And then we will start again.

(A recess was taken.)

* * *

Q What was happening in your life at the time you received this 500 to a thousand dollar cash payment from Mr. Schiffman?

MR. KLEIN: Objection.

THE COURT: Go ahead.

A At that time I was preparing myself to go in for open heart surgery. Also --

MR. KLEIN: Now I move for the withdrawal of a juror and the declaration of a mistrial. This was calculated to --

THE COURT: Stop making speeches. Sit down, Mr. Klein.

MR. KLEIN: I take exception to your Honor's attitude towards the defense.

THE COURT: Sit down. I'll do more than that. Sit down.

MR. KLEIN: I take that as a threat, your Honor.

THE COURT: All right. You respectfully move, and I respectfully said that this is all I am going to allow on that subject, and I don't want any speeches to the jury at this time. You will have plenty of time later.

MR. BRILL: May I ask your Honor --

* * *

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MR. KLEIN: Your Honor,may I ask in this connection that Mr. Sagor ask the witness, point out anywhere in the grand jury testimony where there is a consistent statement instead of --

MR. SAGOR: I am going to object to that, your Honor. I move that it be stricken and I will offer the grand jury testimony, if Mr. Klein persists.

MR. BRILL: That is an improper threat and I respectfully object to it and ask your Honor to tell the jury to disregard it.

THE COURT: I am going to sit here until everybody gets quiet. That's all I can do.

What do you want now, Mr. Klein?

MR. KLEIN: I wanted the question framed in such a way as to ask the witness to point out where in the grand jury testimony that is anything inconsistent with the answer he gave Mr. Brill.

THE COURT: Let him do it his way. He is examining.

MR. KLEIN: Except that the prosecutor is putting all the words in and just asking him for a yes or no.

THE COURT: Well, that's right. It is a recorded question and answer. It is perfectly normal.

BY MR. SAGOR:

Q By the way, let me come back to it, Mr. Widlitz,

* * *

THE COURT: I would say in view of the cross examination I will allow it, yes.

MR. BRILL: I respectfully except.

THE COURT: All right.

Q Do you have anything else to tell the Government --

A No, sir.

Q -- other than your involvement in Cadgie Taylor?

A No, sir.

MR. BRILL: That is an improper and a totally inaccurate answer, because he has already testified that he told the Government that he failed to include the cash that he says he got from Kelly, Andrews in his income tax return for 1970.

THE COURT: And he also says he forgot because he was going for open heart surgery. If that's what you want me to say, I'll say it.

MR. BRILL: I didn't ask your Honor to say that. Your Honor volunteered that.

THE COURT: You are asking me to say that.

MR. BRILL: No, I'm not.

THE COURT: I am going to keep the record straight.

MR. BRILL: That is an excuse. That is not an act.

THE COURT: Look, I let you go pretty far in that cross examination, Mr. Brill, quite far, properly so, and

I think you are entitled to it.

All right. Next. What else?

MR. SAGOR: Nothing further.

MR. BRILL: I have a few questions inspired by the redirect.

MR. SAGOR: Can we stop these comments? I have tried to restrain myself. They are unfair.

THE COURT: I have tried it for 40 years.

MR. BRILL: 45, I think.

MR. SAGOR: Some judges --

THE COURT: Never mind what some judges do. I run my own court.

RECROSS EXAMINATION

BY MR. BRILL:

Q Do you remember at one of the breaks today before I began my cross examination that you were smoking a cigar?

A Yes, sir.

Q And that is since you have had or since you were preparing for open heart surgery?

A Yes, sir.

Q When you wrote this story and you told it to the grand jury, were you trying to get the sympathy of the grand jury and avoid being indicted in this case?

A I was trying to avoid being indicted. I can't deny that.

Q And you were trying to get the grand jury's sympathy by telling them this sad tale of woe about your

family's problems and your own health, right?

A Yes, sir.

Q And that is what you are doing now with this jury, aren't you?

A I am only answering questions.

THE COURT: He is not being tried by this jury, Mr. Brill. I don't understand the question.

Q The question is are you trying to get the sympathy of this jury by telling this jury all about the sad tale of woe about your physical and health problems?

THE WITNESS: Your Honor, I am only answering the questions as asked of me.

THE COURT: Yes. I will instruct the jury it has nothing to do with this witness at all. You have nothing to do with his fate and whether you sympathise with him or don't sympathize with him is not within your province.

Next question.

MR. BRILL: Could I have his comment read back, please?

THE COURT: Read it back. It is not a comment. It is not a comment. It is an instruction.

THE COURT: Just before your Honor's instruction.

(The record was read.)

THE COURT: That's apparently in answer to your question whether he is seeking sympathy from the jury. Then

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I made an instruction to the jury that they have nothing to do with this witness.

MR. BRILL: Thank you very much.

Again I repeat, lest you forget, the fact Mr. Widlitz pleaded guilty doesn't mean anybody else is guilty. You will have to decide that yourself on the evidence.

Go ahead.

Q When you were talking about the monies that you received from Mr. Schiffman, $500 to $1,000, in response to Mr. Sagor's question, did you have in mind that you told us on cross examination today that you had never before received any amount of cash? Don't you understand that?

THE COURT: I didn't hear it.

MR. BRILL: My voice drops.

THE COURT: Read it back. The reporter can read it.

(The question was read.)

THE COURT: What do you want him to answer, whether he understands it or the question itself?

MR. BRILL: The question itself.

THE COURT: Skip the "don't you understand that."

MR. BRILL: That can be stricken.

THE COURT: Strike it out.

A As far as I could ever recall, I have never received

* * *

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MR. KLEIN: December 24, 1971.

THE COURT: All right. That will be part of the record.

MR. SAGOR: At this time the government would like to show the members of the jury briefly the bank documents that are in this case.

MR. KLEIN: Before that happens, your Honor, may we come into the robing room for a moment?

THE COURT: Before he does it or while he is doing it?

MR. KLEIN: Before he does it because ti relates to it.

THE COURT: All rihgt.

(In the robing room)

MR. KLEIN: Your Honor, there is an exhibit here which is the Arizona bank account of Cadgie Taylor, the monthly statements of the bank account, and on it are two items, two withdrawal items, 35,000 and 50,000.

Yesterday you excluded the personal bank account of Mr. Ridland which indicated a deposit of the 35,000 withdrawal. We don't have any Cadgie Taylor records, I mean books, with us here to indicate the $50,000 item. My best recollection is that it went up to Canada for exploration.

MR. SAGOR: Montana.

MR. KLEIN: Montana for exploration. I want to renew my objection to the monthly statement because the jury can be led to infer by speculation that here is the $35,000 and here is the $5000 item and 40,000 could have come from there. I say it is not complete. Without the corresponding checks you can't speculate as to who received the proceeds of those two withdrawals.

Furthermore, these are Cadgie Taylor and there is nothing to show that Mr. Ridland received any of the proceeds of these two checks. I think in all fairness that that exhibit should be stricken.

THE COURT: It is a corporate paper so that it has nothing to do with any compulsion against any constitutional privilege. As in any case, a criminal case as well, when the burden to go forward is on the government as the proponent, it can introduce the document and then the defendant, the corporation or the defendant himself, can rebut. That is the way that stands. If he lost his papers there is nothing I can do about it or says he lost his papers.

MR. KLEIN: The only trouble is it is incomplete. Nobody can tell from looking at withdrawals alone --

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THE COURT: That maybe very effective argument to the jury even if you don't have any witnesses. It is very possible.

MR. KLEIN: Why should I take it that far. I think as a matter of law it should be excluded.

THE COURT: I don't think so.

MR. KLEIN: On the ground of completeness.

THE COURT: No.

MR. KLEIN: I also have a request to charge --

MR. BRILL: May I join in that motion?

THE COURT: Sure.

MR. BRILL: I think also it has an additional impact upon Mr. Steel because there is no showing that he was connected in any way with any of these accounts.

THE COURT: Obviously you can argue that. If it is not in furtherance of the conspiracy, unless they find that, it certainly isn't binding on Mr. Steel.

MR. MARCUS: Or Mr. Feis.

THE COURT: Or Mr. Feis.

MR. KLEIN: Or Mr. Ridland. It is a corporate check.

The additional request is:

"You are not permitted to draw any inference unfavorable to any of the defendants from any of the

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withdrawal entries which may be reflected upon the bank statements of Cadgie Taylor."

THE COURT: Submit that in writing to me and I will consider it.

MR. KLEIN: It is in writing.

THE COURT: When I go over the other requests I will give you an answer.

Where do we stand on time?

THE COURT: You are going to show and then what?

MR. SAGOR: We will rest.

THE COURT: How long will the motions take?

MR. BRILL: They won't take too long because your Honor has already indicated your Honor's disposition.

THE COURT: You can renew the motions at the close.

MR. BRILL: We will renew them and we may add a couple of phrases.

THE COURT: You may have a longer argument at that time. What I am interested in now is time, gentlemen. I won't delay or impede you in your presentation.

It is now almost 20 minutes to four. I have

* * *

MR. MARCUS: If we are working late tomorrow, I would not want to be the only summation. If there be two, it will be fine, but not the only summation.

THE COURT: That is correct.

(In open court)

MR. SAGOR: May I proceed, your Honor?

THE COURT: Yes, please.

MR. SAGOR: Members of the jury -- your Honor, can you instruct the jury so I don't have to that they may well see these exhibits themselves?

THE COURT: I will say that in the charge. You will be allowed to see any exhibits that you call for in the jury room when you are deliberating on a verdict. That is part of the record. Also, if you want to, you don't have to, you may ask for clarification of testimony if there is any disagreement about what somebody said. For the time being, let's not cross that bridge. We are not up to it yet.

MR. SAGOR: Members of the jury, Government's Exhibit 38 in evidence is the account card in the name of Feis Securities Company, special account for Cadgie Taylor Company, and the address is 111 John Street, New York, New York. This bank is at 40 Wall Street. It is the Manufecturers Hanover Trust Company.

Exhibit No.1, his prospectus, makes reference to the Manufacturers Hanover Trust Company at 40 Wall Street.

MR. BRILL: Your Honor, I think this is going beyond description of what Mr. Sagor advised us in the robing room he was going to describe. He is talking, as I understand, I couldbe in error but I don't think so on this account, about bank account records.

THE COURT: What is this?

MR. BRILL: Now he has brought into the very first sentence a reference to Exhibit 1, whichis not a bank account record. I don't think this is the time to make such references.

THE COURT: If you can avoid it, do it.

MR. SAGOR: I am trying to. I would like to put it in context.

THE COURT: Everything is in evidence and counsel for any side can mention to the jury what's in it, they can read it, but it is a question os simply keeping your mind on a particular phase ofthe case. That is the only thing we are interested in now. Let's stick to the bank records as much as we can.

MR. SAGOR: Yes, your Honor.

Government's Exhibit 38 are the monthly

statements at Manufacturers at 40 Wall Street and it shows deposits in the month of June to the Cadgie Taylor special account of $200 with the balance in June of 1970of $200.

In the month of July there are no deposits to the bank account.

In the month of August there areno deposits to the special checking account.

In the month of September, there are deposits of 12,000 --

MR. KLEIN: May I respectfully object to this? I think it is improper. It is double summation. It is highlighting. They are all in evidence. In summation you can point out the specific portions that you wish the jury to see.

THE COURT: It is a common procedure. You may proceed.

MR. SAGOR: In the month of September there are deposits of $12,400. In the month of October there are deposits -- it is hard to read -- of over $200,000, in excess of $200,000.

There is a withdrawal on 10/23 with the letter C of $60,381 on October 23.

Government's Exhibit 38C in evidence is a

certification voucher at Manufacturers on the Cadgie Taylor special account in the amount of $60,381 on October 23, 1970, and that is made out to the Sierra Silver Mining Company.

MR. KLEIN: Would he indicate that is an account maintained by Feis Securities?

THE COURT: If there is anything you want to read after Mr. Sagor gets through, you may, Mr. Klein.

MR. SAGOR: Defendant Ridland Exhibit W is the Sierra Silver Mining Account at 3661 Maryland Parkway, Las Vegas, Nevada. That is at the American Bank & Trust Company, 70 Wall Street. That account in the month of October, 1973, had a balance of $699, approximately, at the beginning of the month. On October 23, there is a deposit of $60,381 and a withdrawal on the same date, October 23, 1970, of $50,000. On October 29th there is a withdrawal of $10,000, leaving in the Sierra Silver account in October, 1970, a balance of approximaterly $609 or $699. The figures are faint.

Now returning to the Cadgie Taylor special account at Manufacturers, there is in the month of November deposits in that account --

THE COURT: Somebody is rising.

MR. MARCUS: If Mr. Sagor is going to present anything that he has in evidence, I would respectfully suggest that he present the whole thing and not jump back and forth, which to me is coming as summation, because it is part of an exhibit, jump to another exhibit, another exhibit, and then comes back to this original exhibit.

THE COURT: Overruled.

MR. SAGOR: In the month of November, on the Cadgie Taylor special account, there are deposits in the amount of $16,000.

Now, there are withdrawals in the month of November, 1970, from the Cadgie Taylor account. The first withdrawal is on November 2nd, a check in the amount of $154,619.

Now, in the Cadgie Taylor corporate account at the First National Bank of Arizona there is a deposit in that same amount on October 30, 1970, of $154,619.

MR. BRILL: What exhibit is that, please?

MR. SAGOR: That is Exhibit 40A in evidence.

Now, the second withdrawal is on November 4, 1970,

from the Cadgie Taylor account, and that is in the amount of $16,000. Escuse me. That is on November 4th in the amount of $16,000.

There is a next withdrawal on 11/5/1970 in the amount of $15,000, and on 11/18 in the amount of $16,400.

Now reading from Exhibit 39 in evidence, which is the Feis Securities account at Manufacturers, you will note on November 5, 1970, there is a deposit of $15,000 and on 11/18/1970 there is another deposit of $16,400.

Now, there is a withdrawal from the Feis Securities account on 11/5 with & C, and that is in the amount of $10,000, on November 5, 1970.

On November 5, 1970, in connection with the Feis Securities account at Manufacturers, there is a certification voucher in the amount of $10,000, and the payee of the certified voucher is Kelly, Andrews and Bradley.

And one previous document that we have seen --

MR. BRILL: This is not a bank record, Judge. And I think we are going far afield.

THE COURT: If it is not a bank record, we shouldn't do it.

MR. SAGOR: It is one previous document, Judge.

MR. BRILL: I press it. Let's be fair about it.

MR. SAGOR: May we have that stricken, "Let's be fair about it"?

THE COURT: It is perfectly fair, and I will admonish Mr. Brill not to repeat that again. It is purely a question of the order in which you present it, and it can be done either way.

In my discretion, now that I am prompted to have to say this, it would have been perfectly proper for Mr. Sagor to do it this way. But I think that it will be better to do it in summation. That is all that is involved here and there is no morality involved on either side.

MR. SAGOR: Getting back to the November deposits in the Cadgie Taylor special account, there is a deposit on November 17, 1970, in the amount of $15,987.50.

Going to the deposits for the Cadgie Taylor special account, we find Exhibit 38B-1, which is an amount of money from the Sierra Empire Mines, Ltd. --

MR. BRILL: Does it say that there?

MR. SAGOR: Yes, Mr. Brill, Sierra Empire Mines, Ltd., on November 17, 1970. The deposit is November 17, 1970.

Now, Government Exhibit 33 in evidence is the annual report of the --

MR. BRILL: That is not a bank record, Judge.

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MR. SAGOR: They haven't seen this before, your Honor. Your Honor said I could connect it.

MR. BRILL: It still isn't a bank record.

THE COURT: He can show them that. So can you. You can show anything that is in evidence.

MR. BRILL: Of course. I am aware of that. But I thought this is limited to bank records.

THE COURT: It is not limited.

MR. BRILL: All right. Your Honor has my exception.

MR. SAGOR: Sierra Silver Mining Company and its subsidiary, Sierra Empire Mines, Ltd.

In the top righthand corner the reference to British Columbia, Sierra Empire Mines, Ltd., and Vancouver, British Columbia.

In the upper lefthand corner we have the reference Toyal Bank of Canada, Vancouver, British Columbia.

In the report of Sierra Silver Mining Company, Government Exhibit 33, is a reference to banker, First National Bank of Arizona, Phoenix, Arizona.

Government Exhibit 40A is the Cadgie Taylor corporate account at the First National Bank of Arizona, Phoenix, Arizona. On the 30th there was a deposit you saw a month ago of $154,619. Prior to the deposit of

$154,619 there was a balance, on October 29, 1970, of $2.54 in the Cadgie Taylor corporate account.

On 11/3/1970 -- let me back up one moment. The Sierra Silver Mining Company and its subsidiaries, fiscal year ending October 31, 1970.

On 11/3/1970 there are two withdrawals from the Cadgie Taylor corporate account in the amount of $50,000 and $35,000.

Now, Government Exhibit 41A is the corporate account, another corporate account, of the Sierra Silver Mining Company, and that has a deposit on 11/3/1970 of $50,000.

A deposit slip, Government Exhibit 41B, dated October 31, 1970, and deposited November 2, 1970, is in the amount of $50,000, and it is in currency.

MR. KLEIN: I'll object to that classification. It is on the deposit slip opposite the word "currency."

MR. SAGOR: And Miss Block so testified.

MR. KLEIN: Yes. But that it is not necessarily currency.

THE COURT: What?

MR. SAGOR: Excuse me. That is not correct, Mr. Klein.

MR. KLEIN: It is in the deposit on the deposit

slip which is marked currency and checks, so forth. This is opposite the word currency.

THE COURT: Yes.

MR. SAGOR: May I have a moment, your Honor?

THE COURT: Yes.

(Pause.)

MR. SAGOR: Your Honor, at this time that's all the references the government will make to the documents and save any further references to summation.

The government rests, your Honor.

THE COURT: All right. Do you gentlemen want to come to the robing room for a minute?

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(In the robing room)

MR. KLEIN: Your Honor, before we make our motions, the reference to Cadgie Taylor special account is confusing to the jury. This is an account that was obtained by Feis Securities in which he was supposed to put the proceeds of sale of Cadgie Taylor stock. But we are talking about Cadgie Taylor bank accounts, special account and regular account, and it looks like it is maintained by Cadgie Taylor, and I would like to clarify that for the jury.

THE COURT: You can do that. You can do that when you come out again. Take the account and show them the name of the account without any further comment.

MR. KLEIN: Judge, do you think an instruction at this time might be in order in view of the fact that the monthly statement of the Cadgie Taylor account in Arizona, showing the two withdrawals of 35,000 and 50,000, was specifically mentioned? I know your Honor instructed the prosecutor not to make mention of the 35,000 in his summation. I would also like your Honor to instruct him not to make mention of the 50,000 in summation.

THE COURT: I'll have to look that over again. You will have to give me all the exhibits. I can't figure it out myself.

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MR. KLEIN: Then I would want the jury instructed as to incompleteness, that there is no connection of criminality by the fact that you have an item in a monthly statement without the corresponding checks. There is no connection with anybody or that it was used for this particular purpose. That is sheer speculation.

THE COURT: Well, I don't know. Let me look at all the exhibits and then I'll see what I'll do about it. I don't mean this minute. Right after court. Maybe tonight. I've got a hearing at four-thirty. Maybe I'll look at it in the morning.

Just collect for me, will you, because they are the Government's exhibits, those which are relevant to this problem. Put them all in one and give them to Mr. Hughes to take upstairs.

MR. SAGOR: I can give you one of our charts, just for your eyes only.

MR. KLEIN: I am interesting in the two items, the 35 and the 50.

THE COURT: The chart will show me where they go and where they come from. That's all I want to know.

MR. KLEIN: There is no evidence in the case --

THE COURT: I understand. Maybe the chart shows it falls off the earth, that the earth is still flat.

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I don't know where it goes.

Go ahead.

MR. BRILL: I have some motions to strike some of these exhibits, your Honor.

THE COURT: Okay.

MR. BRILL: I guess I ought to start at the beginning.

MR. MARCUS: Before Mr. Brill starts, will motions made by one be deemed to be made by all?

THE COURT: No.

MR. MARCUS: We should join specifically?

THE COURT: Specifically. We are dealing with individual guilt here.

MR. BRILL: I move to strike -- I may have missed some of these. If I do now, I'll come back to them later, with your Honor's permission.

I move to strike Exhibits 24 --

THE COURT: Describe them as you go along.

MR. BRILL: I will, sir.

-- and 25, which are telephone records of Kelly, Andrews & Bradley.

THE COURT: Showing calls to Steel?

MR. BRILL: Purporting to show calls to Steel's number, there being no evidence at all with respect to what

* * *

THE COURT: Any other motions?

MR. BRILL: I am finished.

MR. KLEIN: I am back to the Cadgie Taylor bank statements. I have withdrawals of 35,000 and 50,000. We don't have the records because the business was sold. However, the accountant -- they recollect the 50,000 went up for exploration to the mines somewhere. They don't know exactly to whom the check was paid. Even if I get that in evidence, then it really highlights the 35,000 because I didn't explain that. By explaining one and not explaining another, I am highlighting it. I think both should go out because there is no connection. Your Honor said you would consider it.

THE COURT: I did consider it. As I said yesterday, it is prima facie and it's subject to rebuttal.

MR. KLEIN: Subject to what? It is only half a record.

MR. SAGOR: You have your accountants here. You have the books and records.

THE COURT: The basic thing is that bank account at the American Bank which you brought in leads to a fair inference that the $50,000 having been drawn, charged the same day, was cashed.

MR. KLEIN: I am not worrying about that.

I can explain that. I am talking about the Cadgie Taylor bank account in Arizona. There are two withdrawals, $35,000 which Ridland put into his bank account for a while, and the $50,000 which went for exploration. Without checks we have half a thing, two withdrawals.

THE COURT: Let me hear him on that. It is a troublesome thing.

MR. SAGOR: The 50,000 deposit also corresponds to a corresponding deposit in Sierra Silver showing the use of these funds for beneficial purposes to the company and not in the prospectus and availability of funds.

THE COURT: I don't understand that. Wasn't the company supposed to get the funds?

MR. SAGOR: The company was supposed to get the $60,381.

THE COURT: Which is here in the American Bank?

MR. SAGOR: And then cashed.

THE COURT: That's a separate thing.

MR. KLEIN: I am talking about the $50,000 withdraw. from the Cadgie Taylor account.

THE COURT: What does that prove? I said I would consider that.

MR. SAGOR: You said you would consider the $35,000. It is not called for in the prospectus. This money was misappropriated by Ridland for his personal account.

THE COURT: That you haven't proved. That is why I did not allow the proof of the 35,000 in Ridland's personal account, because it may have been legitimate. You have to prove more than that to show the man is a thief. I would think.

MR. KLEIN: May I have the same ruling with the 50,000? Because the withdrawal is the same day as the 35,000.

THE COURT: Unless I hear more I am inclined to strike it out, provided that you say that is what you want me to do.

MR. KLEIN: I do.

THE COURT: And you are not going to say to the jury already having been seen it it too late. If you want to take the position it is too late, take it now.

MR. BRILL: The jury could be instructed to disregard it.

MR. SAGOR: Your Honor, the $85,000 which goes out thenext day is part of the plan here right after the end of the fiscal year to take this money and use it

* * *

MR. SAGOR: Your Honor, I am entitled to prove this man had ample funds, enough to make a payment of $40,000, and I am merely showing that having these monies in the bank and the monies moving from the bank is an available source of cash to make a payment in this case.

THE COURT: To me it is a little remote. I will allow the American Bank & Trust and I am going to instruct them to eliminate -- get me the numbers of the exhibits.

MR. SAGOR: Can we wait until after the accountant testifies and see what happens to him?

THE COURT: I would like to do it at the close of the government's case. I can't.

MR. SAGOR: Then I ask -- your Honor has the Cadgie Taylor bank statement. I gave it to you last night.

THE COURT: You gave it to me?

MR. SAGOR: Yes, plus the statement.

THE COURT: Somebody took it back from me, though, don't you remember, last night? Somebody asked me for it last night - I recall that - as I was sitting at the bench there at the end of the day.

MR. SAGOR: Mr. Klein, do you have that?

* * *

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THE COURT: That's right. I thought the jury understood that.

MR. BRILL: May I advise the Court and jury that Mr. Steel rests.

THE COURT: Mr. Steel rests. Yes, sir.

MR. KLEIN: The Defendant Ridland calls Miss Hepola.

BERNICE MARY HEPOLA, a witness called by Defendant Ridland, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KLEIN:

Q Miss Hepola, where do you reside?

A In Phoenix, Arizona.

Q And what is your profession or occupation?

A I am an accountant, self-employed accountant.

Q And was there a time when you were employed by Cadgie Taylor?

A Yes.

Q And how about Sierra Silver?

A Yes.

Q And did you do the bookkeeping and accounting there?

A Yes, I di.

THE COURT: Let understand it. You did the

bookkeeping as well as the accounting?

THE WITNESS: I did everything except the income tax.

THE COURT: What do you mean by "everything"?

THE WITNESS: I did do --

THE COURT: You didn't certify.

THE WITNESS: No. I am not a CPA.

THE COURT: Okay. I just want to make that clear.

In other words, you are really a bookkeeper as far as Cadgie Taylor is concerned.

THE WITNESS: I graduated in accounting --

THE COURT: I know that. But you are a bookkeeper in your function.

THE WITNESS: Well, I do everything. I mean I can do statements. I do much more than just bookkeeping.

THE COURT: All right.

THE WITNESS: I don't consider myself just a book- -- keeper.

THE COURT: That's not the question, Miss Hepola. Because there may be something else coming up, we have to clarify it.

Is it true that normally a bookkeeper -- that doesn't mean you just have to sit and write in the books; you can be a head bookkeeper, you can be a supervising bookkeeper -- maintains the books and accounts of a company in the regular

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course of business, right?

THE WITNESS: Right.

THE COURT: And there is also an outside, independent accountant who doesn't write in the books at all, is not allowed to write in the books --

THE WITNESS: Right.

THE COURT: -- and who then certifies whether or not the books are kept properly based on accounting principles, and so on?

THE WITNESS: That's right.

THE COURT: And the second part you cannot do with Cadgie Taylor, is that correct?

THE WITNESS: That is correct.

THE COURT: That's all I wanted the jury to understand. Go ahead, Mr. Klein.

BY MR. KLEIN:

Q Did you act in that capacity in behalf of the Cadgie Taylor books during the year 1970?

A Yes, I did.

Q And do you still handle the books of Cadgie Taylor?

A No, I don't.

Q Did there come a time when Cadgie Taylor was sold?

A This was after I did not work any longer. I moved

* * *

A No, disbursements are in a different journal. That is cash receipts that you are looking at, the page you are looking at now.

Q And there is also a cash disbursements journal?

A Correct.

Q And was that brought with you today?

A You have it in your hand.

Q This, too?

THE COURT: It is what, did you say?

THE WITNESS: It is in his hand.

THE COURT: I can't hear you.

A It is in his hand. It is in that book.

THE COURT: The disbursements journal is in the same bound book, is that it?

THE WITNESS: Yes.

THE COURT: Show him the page and then we'll know what we are talking about.

A The cash disbursements are right here behind the cash receipts.

Q Can you point out the disbursements that shows along with the entry of 60,381?

A Oh, no.

Q Do you see a disbursement there on the same

date of October 23, 1970 for $50,000?

MR. KLEIN: I have two objections.

THE COURT: This is not a good voir dire.

MR. SAGOR: It goes to the --

MR. KLEIN: There is nothing to show that the 63,000 was disbursed.

THE COURT: Why don't you take your time? Do you have any objection to the book as an authentic book?

MR. SAGOR: I want to understand this page in connection with the other page and thatis the basis for my question.

THE COURT: All right.

Q Miss Hepola, what I am asking you is, is there a disbursement on the same date, of October 23rd, of $50,000?

A On October 23rd?

Q Yes, madam.

A For $50,000?

Q Yes, madam.

MR. KLEIN: Your Honor, we are in cross-examination now.

THE COURT: No, no, no, no.

A There was a disbursement on October 20 --

there was a transfre, what I call a transfer of funds. Check No. 101 on the New York Bank was written out for $50,000, and that was deposited into the Phoenix Bank.

Q On what date?

A The deposit didn't hit -- I don't believe -- you have the exhibit there, which shows when it did hit the bank. The check was written on the 23rd. However, it didn't hit the Phoenix Bank until later.

Q I don't understand that.

THE COURT: The Sierra Silver Mining Company, is that it now?

MR. KLEIN: Very simple.

MR. SAGOR: Please sit down. This is voir dire.

MR. KLEIN: Don't tell me to sit down. His Honor is here for that purpose.

THE COURT: Is that the Phoenix Bank for the Sierra Silver mining, the same company?

THE WITNESS: Yes.

Q What I don't understand, Miss Hepola, is the $50,000 transfer. You say that was made on October 23rd?

A Yes.

Q And it was checked out, it was actually withdrawn

from the account, the American account, on the 23rd? Do you see that from the bank statement?

MR. KLEIN: This is not proper voir dire. I haven't developed anything, and we are in cross-examination before direct.

THE COURT: Would you let me run it, please, Mr. Klein?

A No, I can't read this thing hardly at all.

Q Let me help you. This is a red pen that was used.

A You can hardly see this thing.

Q Can you read the 50,000 there (indicating)?

MR. KLEIN: There is a withdrawal of $50,000, is that the item?

A Yes, it looks like 50,000.

Q Here. Let me help you (handing manifying lens).

That withdrawal is entered on the books where?

A Where is that withdrawal?

Q Yes.

A It is on page CD22.

Q Can I see that?

A Right here it is (indicating).

Q And that --

MR. BRILL: Could that page be identified in some way, your Honor?

MR. SAGOR: Certainly. Let's continue and we'll have it marked AD1 for identification.

MR. BRILL: AD1 has already been marked. That's page 6.

MR. SAGOR: AD1.

THE CLERK: AD2.

MR. SAGOR: I assume that AD is page 6.

THE COURT: No.

MR. SAGOR: I see. Let's have this AD2 for identification.

THE COURT: What page?

MR. SAGOR: Let's ask Miss Hepola. It appears to me to be ca[illegible] CD22.

THE WITNESS: CD22 for the fiscal year ending October 31, 1970.

THE COURT: And what is it described as?

THE WITNESS: Cash disbursements journal.

THE COURT: Cash disbursements journal.

(Defendant Ridland Exhibit AD2 was marked for identification)

BY MR. SAGOR:

Q That shows a disbursement from the American --

THE COURT: Never mind. It is not in evidence. All I am allowing you to do now is to determine the authenticity.

MR. SAGOR: That's what I am trying to do. I am seeing how the thing ties in. If it does, I'll have no objection.

Q The disbursement is made --

MR. KLEIN: Excuse me. Even if it doesn't tie in, if I want to put it in, that is no objection to it.

THE COURT: That remains for me to decide, Mr. Klein.

MR. SAGOR: Perhaps I could examine from the lectern.

Q Miss Hepola, there is a disbursement from the account on October 23rd, is that correct, according to AD-2 for identification?

A Correct.

Q Now, do you have a corresponding debit or a corresponding deposit on the same day, October 23rd, since there is a withdrawal from the account on the American Bank on the same day?

A In my books I show it as going into the bank,

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into the Phoenix Bank as of the same day. I cannot post a check -- when you are transferring funds you cannot post a check and then a deposit slip which covers the same transaction.

So therefore I debited the New York bank account and credited the Phoenix bank account.

Q No. I think you debited the Phoenix bank account and credited to the New York bank account, isn't that correct?

A No, that's not correct.

Q You did what then? You debited the New York bank account and credited the Phoenix account.

THE COURT: Credited cash?

THE WITNESS: You are right. I debited the Phoenix bank account and credited the New York bank account.

Q What date did you debit the Phoenix bank account?

A The same date.

Q That would be October 23, 1970?

A Right.

Q Now, have you examined, while you were waiting to become a witness in this case, the bank account for Sierra Silver at the Phoenix bank?

A Yes.

Q I show you what has been previously marked

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Government's Exhibit 41-A in evidence. --

MR. KLEIN: At this time I am going to again object. This is not proper voir dire.

THE COURT: I say it is.

What number is that?

MR. SAGOR: 41-A, your Honor.

Q Miss Hepola, on October 23rd, is there an entry or a deposit into the Phoenix bank account?

A No, not in October.

Q Can you explain to me how you have a disbursement from the account of the American Bank and Trust Company on the same day for $50,000? I'll rephrase my question if you don't understand it.

Where did, according to the books and records, the $50,000 disbursement on the American Bank account go?

A It went into the Phoenix account.

Q Let me ask you --

A But it didn't hit there until November 3rd.

Q You have looked at bank statements before from the American National Bank?

A Yes. I reconciled all these.

Q And when someone writes a check on an account, it is not withdrawn from the bank account -- the bank doesn't list as a withdrawal -- until it is actually

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deposited in another bank, isn't that so?

MR. KLEIN: I object to that as testimony, your Honor, not as a question.

THE COURT: Overruled.

A Would you state that question again, please?

Q Sure. Let me try it again. Supposing you write a check on a bank account and you put it in your pocketbook and don't cash it yet. The bank, your bank account, doesn't list that as a withdrawal until you cash that check or use it in some way.

MR. KLEIN: Your Honor, that is not the fact that was testified here with regard to the $60,381 or the $50,000, particularly with the 50. Those weren't the facts.

THE COURT: I don't see what you are arguing about. It is obvious that if you don't let the bank know you drew a check they are not going to charge you for it. They are not clairvoyant.

MR. KLEIN: If you deposit it a week later there is nothing wrong with that.

THE COURT: There is nothing wrong with it. Nobody says so.

MR. KLEIN: All right.

BY MR. SAGOR:

Q Now Miss Hepola, do you see Defendant's Exhibit D

(indicating)?

A Yes.

Q Do you see the withdrawal from the bank on the same day, October 23, 1970?

A You asked me that before, didn't you?

Q Yes. Now I am asking you, where is that withdrawal on the same day reflected in your books?

A It was just marked as an exhibit.

Q You say that is the withdrawal?

A The $50,000 you are referring to?

Q Yes.

A Yes.

Q And where did it go to? That's what I'm asking you.

A It went into the First National Bank, which is shown here in Exhibit 41-A, on November 3rd.

Q Well, why, to your knowledge, did the American National Bank show it as a withdrawal on the same day?

MR. KLEIN: Your Honor, this is speculative --

THE COURT: That is not proper voir dire now.

Do you object to the introduction?

MR. SAGOR: Yes, your Honor, I do.

THE COURT: Overruled. I will receive it. You may examine about it.

The book is received. The pages are received.

MR. SAGOR: Just for the form, I think Mr. Klein should indicate that it was made in the ordinary course of business. We should have some testimony on that.

THE COURT: Was this book kept in the regular course of business, Miss Hepola?

THE WITNESS: Yes.

THE COURT: And were the entries made contemporaneously with the events that they purport to describe?

THE WITNESS: No, not always.

THE COURT: They were not. But were they within a short time after the events they purport to describe?

THE WITNESS: Yes. I did things when I had time to do them, you know.

THE COURT: I'll allow then.

(Defendant Midland's Exhibits AD, AD-1 and AD-2 for identification, received in evidence.)

MR. SAGOR: Excuse me, your Honor. If Mr. Klein isn't using it, can we examine for the first time this book, if we may, while it is up there? If it is being looked at --

THE COURT: Are you using it now?

MR. KLEIN: I haven't even see it myself.

THE COURT: Are you going to use it now in examining?

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MR. KLEIN: Yes. I am going to ask her about it.

THE COURT: All right. Leave it there.

BY MR. KLEIN:

Q Do I understand that you show a transfer of funds in the sum of $50,000 from the New York bank of Sierra Silver to the Phoenix bank of Sierra Silver? Is that correct?

A That is correct.

Q And if the funds were taken out of the New York bank on October 23rd by either cash or certified check or cashier's check by Dr. Ridland and Dr. Ridland traveled around the country from Canada to the mining properties and he came to you and he gave you the check on November 3rd and you deposited that cashier's check or the cash or the certified check, whatever it is, on November 3rd, would that coincide with your books?

MR. SAGOR: Objection, your Honor. How would Dr. Ridland going to Canada or going around the country and all that --

THE COURT: It is a hypothetical question.

Q Do you know if Dr. Ridland traveled a lot?

A Yes, he did.

Q Are there mining properties in Canada in connection with the Sierra Silver Mines?

A Right.

THE COURT: Do you remember this $50,000 at all of your own recollection?

THE WITNESS: Not really.

THE COURT: All right. Go ahead.

BY MR. KLEIN:

Q But you do recall that it was made in the normal and usual course of business, the deposit?

A Yes, sure.

MR. SAGOR: I am going to object. The record may reflect it is a record made in the ordinary course of business. Whether this was the ordinary course of business what may have happened here, I am going to object to that.

THE COURT: Overruled.

Q There was nothing unusual, was there, about this particular deposit of $50,000?

A Nothing.

MR. SAGOR: Objection.

THE COURT: You can cross examine on that. If you think it is unusual, cross examine about it.

MR. SAGOR: Okay.

THE COURT: But it is admissible, certainly.

Q As a net result of taking $50,000 out of the New York bank and depositing it into your Phoenix bank,

the assets remained the same, didn't it? The total balance, the combined balance, was not affected by that transaction, was it?

A No.

Q It was just a transfer of funds that you can issue checks on the Phoenix bank from against that $50,000, is that right?

A Right.

MR. KLEIN: Your Honor, to save time, I may want to pull those pages from those books. Will that be all right?

THE COURT: Yes.

Q Do you see anything in those books about an item of $16,872 from Sierra Empire on or about November 7, 1970?

A From Sierra Empire, in 1970?

Q Yes. Would it be in those books?

A A cash receipt?

Q No. It would be a disbursement.

A A disbursement?

Q Yes.

(Pause.)

A Would you tell me approximately what time?

Q Do those books cover Sierra Empire?

A No.

THE COURT: We will take a short recess.

(A short recess was taken.)

(Defendant Ridland Exhibits Y, Z, AA, AB, AC marked for identification.)

* * *

Q Miss Hepalo, after the deposit of the 60,381 into the New York account --

THE COURT: Of what?

Q -- of Sierra Silver -- excuse me.

Do you recall me asking you about a deposit of $60,381 in the Sierra Silver account?

A Yes.

Q Do you remember the date of that deposit?

A Well, the bank statement shows it as of November 4th.

Q On or about October 23rd --

A Into the New York account?

Q Yes, into the New York account.

A Yes.

Q That is $60,381, is that right?

A Yes. That was paid -- that was credited to Cadgie Taylor, that's right.

Q Do your books show the credit of it?

A Yes.

Q Where is that? Do you have the books?

THE COURT: You have been over that already, Mr. Klein. She said October 23rd.

Isn't that right?

THE WITNESS: Yes.

THE COURT: We will be here until next week.

MR. KLEIN: I want to show the indebtedness was wiped out and it was a payment on account of the indebtedness.

THE COURT: I agree with you. But how many times?

Q Do you recall that on or about that date, give or take a few days, that you received the balance of the payment of the purchase price of Cadgie Taylor stock?

MR. SAGOR: Objection. The witness has already testified it is September she best remembers it.

THE COURT: Let's get on with this.

Do you find any other payments that are marked as the proceeds of the sale of Cadgie Taylor stock and, if so, what are the dates and amounts thereof?

Is that agreeable to you, Mr. Klein?

MR. KLEIN: Yes, sir.

THE COURT: That is the question.

THE WITNESS: No, I do not have the Cadgie Taylor book.

Q I correct in understanding that the only books that would show the date of actual payment that Cadgie Taylor received for the sale of its stock above and beyond the $60,000 which went directly to Sierra Silver would be

the Cadgie Taylor books?

A Right.

Q And that you don't have the Cadgie Taylor books?

A I don't have the Cadgie Taylor books.

Q So that actually you don't know, do you, the date of actual payment, the date of receipt of actual payment, by Cadgie Taylor of the purchase price?

MR. SAGOR: Objection.

A No.

MR. SAGOR: Please. Objection.

THE COURT: Overruled.

Q What is the answer, you don't know the actual date?

A No.

Q But you do know the stock was sold in September of 1970?

A Yes.

THE COURT: Wait a minute. How do you know that?

THE WITNESS: Well, I know that.

THE COURT: How do you know that? From what?

THE WITNESS: Well, I know that it had to be in before October 31st because here we have this receipt of $250,000.

THE COURT: That's right, but there is the

whole month between September 1st and September 30th is one month, and October 1st to October 31st is another month.

How do you know it was in September rather than October?

THE WITNESS: I don't.

THE COURT: Mind you, again I say my questions have no intention of either affecting the credibility of the witness or anything. I am just trying to get the facts straight so we understand what people know and what they don't know. It's for you to determine all the rest of it, as I said before.

* * *

I have trouble remembering the 1960s. He is talking about meeting Mr. Steel sometime in the '50s.

THE COURT: What about it?

MR. BRILL: I say it's remote.

THE COURT: There is no harm.

MR. BRILL: It is improper. Of course it does no harm but it has no relation to this case.

THE COURT: Unless it goes further it has no relationship. Merely knowing Mr. Steel has no relation.

Let's move on.

Q In the course of the time you have known Mr. Ridland, have you also met Mr. Steel in connection with Mr. Ridland?

MR. BRILL: I am going to object to that question, if your Honor please.

THE COURT: Overruled.

MR. BRILL: I respectfully except.

THE COURT: If you say yes, then give us the time, roughly.

MR. KLEIN: I will object to the question than as not proper cross examination. Nothing like that was brought out on direct, your Honor. She just testified about the books.

THE COURT: In this respect, the Government may

be making the witness his own witness. But go ahead.

MR. BRILL: Would your Honor tell the jury what that means, lease?

THE COURT: If I knew what it meant I would tell them.

It's a technicality of the law which says that where a person is examined on direct examination by one side or the other, it doesn't matter which, you may not put leading questions, for example, to the witness, whereas on cross examination you may ask leading questions.

In fact, that is really what cross examination is about.

Now, with respect to the credibility of a witness, I charge you that in the modern view it doesn't really make that much difference. That is why I smiled. You take the witnesses where you find them and while there used to be a rule that you vouch for the witness' credibility when you put him or her on the stand, that isn't necessarily so.

It will be up to the jury to determine, based on the charge that I will give you on credibility, as to how to assess each witness.

MR. KLEIN: May we approach the side bar?

THE COURT: You may approach the side bar.

(At the side bar.)

MR. BRILL: May we have an offer of proof as to where this line is supposed to go?

THE COURT: I think that would be proper.

MR. SAGOR: The offer of proof, your Honor, is simply Mr. Steel and Mr. Ridland have been friends over the years and they have been associated together for a long period of time. Evidence of association.

THE COURT: Association is admissible.

MR. BRILL: To what?

THE COURT: You can argue to the jury.

MR. BRILL: You and I have been friends for 40 odd years.

THE COURT: You can say "so what" in summation.

MR. BRILL: It doesn't mean you and I will do anything that is improper. The insinuation is there.

THE COURT: There is no insinuation.

MR. BRILL: Will your Honor say that?

THE COURT: In the charge, I will.

MR. KLEIN: I am the one that asked for the conference, Mr. Brill.

The question came up that your Honor said Mr. SAgor would then be making the witness his own witness. Mr. Brill asked you to explain to the jury and then you didn't

explain it. What you did, you went into the subject of credibility while my witness is on the stand.

THE COURT: You tell me what I should say. Maybe I should say it. You are the Judge; what would you charge the jury?

MR. KLEIN: I certainly wouldn't charge --

THE COURT: Not what you wouldn't What would you? Take it down.

MR. KLEIN: In response to Mr. Brill's request?

THE COURT: No, in response to your request. What do you want me to charge?

MR. KLEIN: You can't undo the damage. I will just ask for a mistrial.

THE COURT: What do you want me to charge? Maybe I can correct it.

MR. BRILL: I think you ought to request -- I think the Judge is entitled to the benefit of our assistance.

THE COURT: I am asking him.

MR. BRILL: What was omitted, Judge,as I saw it, was your failure to make a reference to the fact that there is an introduction of new matter by the prosecutor and that on the basis of this new matter he makes her his witness if it is material and relevant.

THE COURT: I thought that was assumed.

Is that all you want or do you want something else?

MR. KLEIN: I just made the motion for a mistrial.

THE COURT: You made a motion for a mistrial?

MR. KLEIN: Yes.

THE COURT: I am asking you now on the record, Mr. Klein, is there any curing instruction you wish me to give, and, if so, tell me?

MR. KLEIN: I don't think it can be cured. It would only emphasize it at this point and compound it.

THE COURT: May I assume at this point you don't know what you want me to say?

MR. KLEIN: No such assumption at all. Let me be very specific, your Honor.

This witness testified she was an accountant. Your Honor took great pains to knock her down in front of the jury and say she was a mere bookkeeper. Now your Honor gratuitously volunteered an explanation of credibility when it wasn't even asked.

THE COURT: Let's get on.

MR. BRILL: Your Honor, just one second, please.

Could I participate in the invitation your Honor extended to Mr. Klein with respect to what request should be made or what limiting instruction should be given?

* * *

A But I can't remember every withdrawal and every check. I mean I would have to look at the books.

Q And you don't have the books.

A And we don't have the books.

Q Are you familiar --

A Unless you subpoenaed them. I don't know.

Q Say that again?

A Unless you subpoenaed them, tried to find them.

Q Are you familiar with any major withdrawals from the Cadgie Taylor Company?

MR. BRILL: I don't know what "major" means, Judge.

MR. SAGOR: Over $10,000.

MR. BRILL: I don't even know if that's major.

THE COURT: Even that is difficult to answer.

MR. KLEIN: I'm objecting to that question unless it is specific, your Honor.

THE COURT: The objection is sustained.

Q Miss Hepola, would you turn to the entires, the general journal entries on November 5, 1970 for the Sierra Silver Company?

MR. BRILL: Were we talking about cash receipts or cash disbursements? What are we talking about? This journal apparently has --

THE COURT: Which are you asking about, the cash

* * *

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(In the robing room:)

MR. SAGOR: Your Honor, I ask I be able to show this. Previously Mr. Klein had argued that this withdrawal which we had before we had the previous bank statement from the American Trust Company, since there was a withdrawal on November 3rd and since there was a coordinate deposit in the Sierra Silver Company of $50,000 --

THE COURT: Where?

MR. SAGOR: On November 3rd. Since we said it was a withdrawal and a deposit of $50,000 from the subsidiary to the parent, I was not permitted after I had originally shown it.

THE COURT: What subsidiary?

MR. SAGOR: From the Cadgie Taylor Company to the Sierra Silver Company.

Since it appeared before we had this testimony that this withdrawal was that deposit, I wasnot permitted to bring out this withdrawal from the Cadgie Taylor Company. Mr. Klein, for example, told us that that could have represented money going into the Sierra Silver Company for purposes of mining operations or something like that.

Now we have established that the $50,000 that this represents, according to her testimony --

THE COURT: What does "this" mean?

MR. SAGOR: The deposit in the Sierra Silver Company. That that deposit is from the cash disbursements from the American Trust Company on October 23rd --

MR. BRILL: Transferred.

MR. SAGOR: Transferred. From the American Trust Company on October 23rd, 1970. Your Honor will remember that this --

THE COURT: I remember.

MR. SAGOR: I would like to bring out and leave in that there was a withdrawal from Cadgie Taylor Company of $5 ,000 --

THE COURT: You keep saying Cadgie Taylor Company.

MR. SAGOR: Yes, Cadgie Taylor.

THE COURT: The last I heard it is in Sierra Silver.

MR. SAGOR: That is the point, your Honor. That $50,000 that is in Sierra Silver, according to the witness, Miss Hepola, comes from there.

THE COURT: No, it doesn't come from Cadgie Taylor. It comes from Sierra Silver.

MR. SAGOR: This is Defendant's Exhibit W at the American Bank and Trust Company. It comes from the Sierra Silver Mining account, bank account No. 1, new bank account No. 2 of Sierra Silver.

MR. KLEIN: Transferred.

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THE COURT: Don't interrupt.

MR. SAGOR: Now, we had assumed before, and that was the basis for your yanking out --

THE COURT: Don't give me the argument. Just tell me what you want.

MR. SAGOR: I want to be able to show that this money was withdrawn from the Cadgie Taylor Company. It did not go into Sierra Silver Mining. That $50,000, according to the witness, that cash was deposited in the company. This goes --

MR. BRILL: What company?

MR. SAGOR: Into the Sierra Silver Mining Company. This figure --

THE COURT: What is "this figure"?

MR.SAGOR: The $50,000 is withdrawn from the Cadgie Taylor Corporation.

THE COURT: Where is that?

MR. SAGOR: This bank statement. Here it is. I wasn't permitted to bring that out because it went right into Sierra Silver and there was nothing wrong with that. I would like to bring that out to show general cash availability.

THE COURT: How do you know this was cash?

MR. SAGOR: Just the withdrawal from the

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company.

THE COURT: I am afraid it is still confusing if you don't know it is cash.

MR. SAGOR: It doesn't have to be cash. It doesn't go into any of the subsidiaries.

THE COURT: Is this in evidence?

MR. SAGOR: Yes -- no.

MR. KLEIN: It was marked.

MR. SAGOR: You asked to mask these two deposits, the 35 and the 50. It is highly significant that after all this money comes in, 35 and 50, and I neglected to tell your Honor about the 42, it adds up to 85,000 plus 42,000. 85 plus 42 comes to $127,000 within two days time after the closing leaves that corporation. I think that is highly unusual.

THE COURT: Where does it go?

MR. SAGOR: This goes to Ridland's personal account. You have not permitted me to bring that out.

THE COURT: No.

MR. SAGOR: This goes to unknown places. It is not in the books and records of the corporation. And this goes allegedly -- this goes allegedly -- to Sierra Empire Mines Limited but put in the books and records of the company a month later.

THE COURT: She explained the Empire thing on the ground it was merely a conduit for the Canadian operation.

MR. SAGOR: That is a question for the jury to believe.

THE COURT: But that is what she said.

MR. SAGOR: That is right.

THE COURT: How are you going to prove otherwise?

MR. SAGOR: The 50,000 she says nothing about.

THE COURT: I will let you ask her about the 50,000, that is all.

MR. SAGOR: That's fine.

MR. KLEIN: Now we are pinpointing the 35.

THE COURT: Do you want him to ask it? He will ask it. You can't have it both ways, Mr. Klein.

MR. SAGOR: I do want to develop and ask her if she knows of any transfer from this account -- I think I have a witness on the stand, your Honor, and it is probative cross examination.

THE COURT: It is. You are opening yourself up obviously. He is going to ask her do you know of any cash withdrawn and she will say no. That will be the end of you. I don't know what you are driving at.

MR. SAGOR: And do you know of any checks to Mr. Midland's personal account?

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MR. KLEIN: She just said no.

THE COURT: I think you are leading with your chin myself.

MR. SAGOR: I don't mind.

MR. KLEIN: That is out of evidence. I am going to ask for a mistrial.

MR. SAGOR: You may. You have asked for it 15 times.

THE COURT: He may get it. Don't be so cocky.

MR. SAGOR: That's why we are here. Now that you will allow me to inquire about the 50,000, may I inquire about the 35,000?

THE COURT: No. Because we know the answer to that.

MR. SAGOR: What about credibility? She will never admit to the fact it was $35,000 that went to his personal account?

THE COURT: Why not?

MR. SAGOR: Let's see. Can I do it?

THE COURT: If you do you will prejudice.

MR. KLEIN: The mask stays over the 50.

MR. SAGOR: No.

MR. KLEIN: You are going to ask a question but the mask stays on it, isn't that so, your Honor?

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THE COURT: I am going to let him ask it in view of the fact there are two - fifty thousands.

MR. KLEIN: Doesn't the mask stay on?

THE COURT: How can it stay on and he can ask at the same time.

MR. BRILL: What is he going to ask, what she didn't make? This is a bank record.

THE COURT: All he can ask her, there is a record shwoing that the Cadgie Taylor account shows a withdrawal of $50,000. Is that reflected anywhere in the books that you have? That is all he can ask her.

MR. KLEIN: She doesn't have the Cadgie Taylor books.

THE COURT: The books you have, Sierra Silver. You can still argue what does that prove about the Cadgie Taylor books.

MR. KLEIN: The jury hears $50,000 is drawn out of the Cadgie Taylor and we don't have the check.

(In open court.)

MR. SAGOR: Your Honor, may I from here?

THE COURT: Go ahead.

BY MR. SAGOR:

Q Miss Hepola, you told us that this $50,000 from the American Trust Company, the withdrawal on October 23,

1970, is reflected on the Sierra Silver books, all the books that you have before you?

A Right.

Q Can you circle where that is reflected?

(Witness writes.)

Q And that was received by the company when, Sierra Silver, the $50,000?

A Well, it shows on the bank statement that it went into the bank on November 4th, wasn't it?

Q I think November 3rd, ma'am.

A November 3rd.

Q Can you put similarly a red circle around the receipt of the company of the $50,000 from the American Trust?

A On this copy of the bank statement?

Q Yes, please.

(Witness writes.)

Q I invite your attention to a withdrawal from the Cadgie Taylor Company on November 3rd of $50,000 and I ask you where that is reflected on the books and records of the Sierra Silver Mining Company or any books and records you have before you?

MR. ALLEN: Your Honor, I think the question is is unfair because there is no indication to whom that check

was made. It could have been made to a third party corporation.

THE COURT: You have made that argument to me before, not in the presence of the jury.

MR. KLEIN: Yes, sir.

THE COURT: You may make it again in the presence of the jury when you sum up.

MR. SAGOR: May I have a moment, your Honor?

(Pause.)

THE COURT: Can you answer that? I will try to get you out, if I can.

Q That will be my last question. Can you answer it?

A No, not without the books.

Q Books of what?

A Cadgie Taylor.

Q You don't see it on the Sierra Mining, is that correct?

A No.

Q Do you see it on any of the journal entries concerning any of the subsidiary companies?

A I was looking in November--

Q Take your time.

A -- and I don't see any 50,000 in here, no.

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Q If you want to take some more time, go right ahead.

THE COURT: I think you said it was your last question.

MR. SAGOR: It is my last question.

A Well, that is Gadgie Taylor probably made out to Shepard Enterprises - somebody like that.

Q You mean that 42,000 plus 50,000 to Shepard Enterprises?

A That's very possible. It ran into quite a lot of money.

MR. SAGOR: May we have marked Government's Exhibit the next number, please.

THE WITNESS: I don't know. As you well know, I am just saying it could be. I don't know.

I shouldn't even say anything.

Q I know that.

MR. BRILL: I object to that, your Honor.

THE COURT: I think it is called for. The witness stated it again and then she said she shouldn't have said it. What do you want from me?

MR. BRILL: I want you to instruct the jury to disregard his comment.

THE COURT: Disregard his comment.

MR. BRILL: Thank you.

MR. SAGOR: May I, your Honor.

THE COURT: May you what?

MR. SAGOR: Get that from over there, if I can.

THE COURT: If you can reach it, yes.

MR. SAGOR: May we have this marked the next exhibit?

(Government's Exhibit 45 was marked for identification.)

MR. SAGOR: Would you give that to the witness, please, Mr. Hughes?

Q Miss Nepola, can you identify that as the 1971 annual report of the Cadgie Taylor Company, among other companies?

A Right.

Q And in there does that reflect the cash disbursements of the Cadgie Taylor Company for 1971?

A Yes.

Q Do you see reflected there at all cash disbursements for approximately $92,000 for drilling, Shepard and Company?

A No.

MR. BRILL: I object to that. She never suggested it was all expended in that year.

THE COURT: Overruled.

MR. KLEIN: Is this paper in evidence?

THE COURT: No. She is just refreshing her recollection at the moment.

Do you want it in evidence?

MR. KLEIN: I don't know what it is.

THE COURT: It is an annual report for October 30, 1971, for Sierra Silver Mining Company and subsidiaries, including Cadgie Taylor. That is what she is looking at.

MR. KLEIN: Thank you.

Q One final question. Did the Cadgie Taylor Company ever make any money?

MR. BRILL: That is objected to as totally immaterial and irrelevant.

THE COURT: Sustained

Q When did it stop operating?

MR. BRILL: That is objected to also.

THE COURT: Sustained. Unless it is before November 30, 1970.

Q Is it reflected in Government Exhibit that you have before you when it stopped operations?

MR. BRILL: That is objected to, your Honor.

THE COURT: You can't ask it that way unless

you offer it in evidence.

MR. SAGOR: I will offer it.

MR. KLEIN: Objected to as beyond the date. I tried to offer the next one and the objection was sustained.

THE COURT: Sustained.

Are we finished with that subject?

MR.SAGOR: Yes.

THE COURT: Anybody want anything further?

MR. KLEIN: Just very short, your Honor.

REDIRECT EXAMINATION

BY MR. KLEIN:

Q You were shown a bank statement, a monthly bank statement, of Cadgie Taylor which indicates deposits and withdrawals, is that correct?

A Correct.

Q It just contains numbers on it, doesn't it?

A Yes, just amounts.

Q Just amounts?

A Yes.

Q It doesn't say from whom the deposit came in or to whom the check was made?

A That is correct.

Q So if I asked you about any particular item

of withdrawal, you couldn't tell me to whom it went unless you saw the check

A Right.

Q With the name of the payee on it, is that correct?

A That is right.

Q Do you have any recollection as to who that $50,000 check may have gone to?

A None whatsoever.

Q And if it was made payable to some other firm elsewhere, it wouldn't be reflected in the books of Sierra Silver, would it?

A No.

MR. KLEIN: No further questions, your Honor.

THE COURT: Anything further?

MR. SAGOR: No.

THE COURT: You may catch your plane.

MR. KLEIN: One more question.

Q Do you know of any $40,000 cash payment --

MR. SAGOR: Objection, your Honor.

MR. KLEIN: Withdrawn.

THE COURT: Overruled. Was there an answer to that? You don't want to ask it? You don't have to. Are you withdrawing the question or not?

* * *

that the payment of a so-called bribe, if you will, to a dealer without disclosure to the customers is itself a violation of the statute, which it is.

So the whole thing boils down, I have been trying to tell the lawyers on both sides, to a rather simple issue here. Was $40,000 paid or wasn't it? We have been here two and a half weeks on that simple issue.

MR. KLEIN: On that point specifically, will your Honor charge that there is no proof that either Cadgie Taylor, Ridland, Feis or Steel paid $40,000 to Kelly, Andrews & Bradley?

THE COURT: No. I am going to leave that to the jury. The Government contends that they had enough established by virtue of the testimony of Widlitz that he was told by Steel that Ridland was on the way with the $40,000, that they have certain bank business, that they saw the money, that Bassani and/or Schiffman said -- well, you could attack them. They are accomplices. That's about all you can do and that's all I can do.

MR. KLEIN: Your Honor is going to charge on the double inference, aren't you?

THE COURT: On what?

MR. KLEIN: If a set of circumstantial --

THE COURT: I won't charge on anything as esoteric as that unless you give it to me in writing.

* * *

would like to take up. May I suggest a recess because I think this is going to take about five minutes or so?

THE COURT: We will let the jury go right after this. You may as well sit in the box.

Come in the robing room.

(In robing room.)

MR. KLEIN: Your Honor, one of the things I would like to take exception to is the prosecutor spoke about sale on the prospectus. He said that the proceeds had to be collected and deposited in the escrow account within 120 days.

My contention is that he only said sale. If you will recall, the other day I attempted or I made an offer of proof through an expert to introduce two other best-efforts, all-sold deals, all-or-nothing, a prospectus of those picked at random, where they say specifically that not only must the sale be made within the time period but the proceeds -- payment must be received and deposited to show the word sale is not all-inclusive of receipt of proceeds and deposit of proceeds of sale, and that's what I attempted to do by the offer of proof.

Your Honor denied me the opportunity to do that. You gave me the opportunity, but you didn't permit me to do it. You turned down my offer of proof.

Now when the prosecutor sums up, it highlights the very fact that I was attempting to establish.

THE COURT: There are two things. One is I have already ruled that since it doesn't say "and paid" in the prospectus itself, I won't allow the prospectus to be used as an instrument of fraud or as a failure to disclose.

On the other hand, there was a legal duty, based on the underwriting agreement, for the proceeds to be received into the account in the Manufacturers Hanover Bank prior to October 5th.

MR. KLEIN: Except that the SEC had both the underwriting agreement and the prospectus before it, and we presume that they compared them and they permitted the prospectus to be issued.

THE COURT: I am not allowing it to show anybody was defrauded by it, but I am showing that as a matter of law it should have been done.

That's enough on that. I will give you an exception to that. I can't do anything more.

Mr. Brill.

MR. BRILL: Your Honor, among other things that I would like to put on the record is an objection to the unfair comment made, which will be the basis for a motion for a mistrial, by the prosecutor in the course of his

* * *

to sell the issue within 120 days. All funds will be deposited in a special account at the Manufacturers Hanover Trust Company, 40 Wall Street, New York, New York, and only if the entire issue is sold will the funds be released to the Company. If, after 120 days, the offering is not completely sold, the Underwriter will return the funds promptly to the public without charge for or payment of interest."

Let me pause there for a moment.

A dealer, as I have indicated, is a retailer of stock, and, as I have said, the underwriter may be considered the commission merchant or the wholesale distributor of the stock. It is common practice for the commission merchants, the underwriter, to enlist the aid of dealers in selling the stock and to pay them on a per share basis the amount that is provided for right in the prospectus, in this case, 10 cents a share.

It is the Government's contention that not only was the $40,000 in cash paid to Kelly, Andrews & Bradley corruptly to influence them to push the stock, but also it was paid, according to the Government's contention, by the Cadgie Taylor Company itself. If you find that to be a fact, it would mean that the proceeds of the underwriting that went to Cadgie Taylor was $40,000 less than appears on the face of the prospectus, Exhibit 1.

I will charge you as a matter of law that that would be a material omission from the prospectus.

On this phase of the case, you and you alone will have to determine whether the approximately $40,000 was paid in cash to Kelly, Andrews & Bradley; if so, whether it was paid by defendant Robert Feis with the acquiescence and cooperation of Johannes Steel and with the approval of Mr. Ridland.

If you find that there was no payment of $40,000 in cash, then that will be the end of it and you should acquit.

If you find, however, that there was a payment of $40,000, that it was secret, that it was the understanding of the people involved that it was not to be put in the prospectus, that it was not to be told to potential customers of the securities, then I charge you that you may find that this was a violation of law and that it represents a device to defraud investors.

Even if the Government has failed to prove to your satisfaction that it was Cadgie Taylor which paid the $40,000 out of the proceeds of the underwriting, it would still be a violation of law to pay a secret $40,000 commission without disclosing it regardless of where the defendants got the money to pay it.

* * *

the stock on October 4th or earlier and had agreed to pay for it at some later date, the transaction and the concealment would still have involved a violation of law, first, because all the stock had to be sold within 120 days not to another firm for later resale to the public, but to the public itself.

Second, although the prospectus simply says that the Cadgie Taylor stock had to be "sold" within 120 days, the underwriting agreement between Cadgie Taylor Company and Feis Securities, which is a part of the registration statement filed with the SEC, made it clear that the requirement was that not only must the stock be sold within 120 days but it must also all have been paid for within 120 days.

It would also have been necessary as a matter of law for the prospectus to be amended to show that Kelly, Andrews & Bradley had become an underwriter and that it was selling for its own account and not simply as a dealer working on a commission of 10 cents a share. That was not done.

In substance, therefore, even if the purported sale to Kelly, Andrews & Bradley by Feis Securities was actually a sale, the failure to disclose that fact to the buyer of the Cadgie Taylor stock would still have made the prospectus misleading.

* * *

GW1

(In robing room.)

THE COURT: Who goes first?

MR. KLEIN: I will go first.

I respectfully except first to your Honor's charge where you used the language that the shares were required to be sold and paid for by October 4th.

The prospectus merely states sold by October 4th, and that is what the public relied on and that was the language approved by the SEC.

I except to that portion of your charge.

THE COURT: I will stick to my charge as given.

MR. BRILL: Could I at this point interrupt?

THE COURT: Yes, sure.

MR. BRILL: I take it these are applicable to all of the defendants. I had the same note in my paid, and I don't want to have to review it. So I join to the extent -- I don't know whether this can be done.

THE COURT: It is up to the Court of Appeals and not me, really. All you have to is say "I join."

MR. BRILL: I join in that.

MR. MARCUS: So do I, your Honor.

MR. KLEIN: I would request your Honor to indicate that if their recollection of the proof is that the prospectus was mailed from New York to another point in

New York, that they must acquit under Counts 2 through 6 because there is no travel in interstate commerce.

THE COURT: I deny that.

MR. BRILL: I join in that.

MR. MARCUS: I join in that.

THE COURT: I deny it.

MR. KLEIN: And the mere use of the mails is insufficient unless it is in interstate commerce.

THE COURT: Denied.

MR. BRILL: I join in that.

MR. MARCUS: I join in that.

MR. KLEIN: I also object to your Honor's charge pertaining to the failure of the defendants to take the stand in their own behalf. It is my understanding that unless we specifically request it that the judges usually don't charge it.

THE COURT: On the contrary, I was waiting for you to tell me not to mention it. Nobody did. So I mentioned it in the usual way.

MR. KLEIN: I usually get it in the reverse.

THE COURT: Not the way I do it.

MR. KLEIN: That was my first experience.

The other day I asked your Honor to take out the word "offered" $40,000, and you said yes, you were going

to take it out. Today you charged, "If you find that there was payment of $40,000 cash or an offer to pay it that you must convict."

I will ask that that be stricken. That was the first time you mentioned $40,000 cash, your Honor.

THE COURT: All right, I will change that.

MR. KLEIN: The next point.

Your Honor indicated that salesmen gave advice to a prospective purchaser on whether or not to purchase the stock.

That is not the function of a salesman. A salesman is there solely to sell stock. He is not sitting there as an expert.

Somehow with that statement you conveyed to the jury that the salesman is giving advice for the company whose stock is being issued, independent advice, and not motivated by anything other than his desire to earn his commission.

THE COURT: I will stick to my charge.

MR. BRILL: I respectfully except.

MR. MARCUS: Exception.

MR. KLEIN: You stated a defendant's participation I am saying I ask your Honor to include in the charge that a defendant's participation in a conspiracy, if any, must

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charge that if, after knowledge of existence of a conspiracy, a defendant joins therein and does some act in furtherance thereof, then he becomes a member.

Do you think you covered that?

THE COURT: Yes.

MR. KLEIN: I believe your Honor stated to the jury, I think your words were: "You must decide on all of the evidence in the case whether a particular defendant joined a conspiracy and participated in it."

THE COURT: That is the same point you raised before. That is the law of the Second Circuit.

MR. KLEIN: That is opposite Stromberg.

THE COURT: Oh, sure.

MR. KLEIN: Overt act number 3 you charged as a matter of the law that the one month difference is not remote, and I except to that.

THE COURT: All right.

MR. MARCUS: I will join in that.

MR. BRILL: I join in it because, if your Honor pleases, it constitutes an amendment of the indictment by the bill of particulars as distinguished from your Honor's instruction.

THE COURT: I note your exception on it.

MR. KLEIN: Your Honor spoke about the intent of

the conspirators. I don't recall your Honor speaking about the intent of the defendants. The way I heard it was: "If you find that any two of the conspirators agreed and intended to do" and so forth "then you can find the conspiracy existed."

I think we are dealing with the intent of the defendants.

THE COURT: No. What I charged substantially was that if two or more persons conspire, you can have a conspiracy, and then if the defendants or any of them adhere to that conspiracy and participate, then they are guilty.

MR. BRILL: Could I interject there, your Honor? I got the same impression which has just been expressed by Mr. Klein. I got the impression that your Honor was discussing the conspiracy and in discussing the elements of the crime pursuant to the statute, your Honor discussed, as Mr. Klein indicated, not in those words, of course, but instructed the jury that they had to find that there was a knowing and wilful participation of the co-conspirators, the conspirators.

THE COURT: No. I think you are wrong.

MR. BRILL: To insure that my hearing was not incorrect, I am going to respectfully except.

THE COURT: Sure.

MR. BRILL: If the instructions are to the contrary --

THE COURT: It is obvious you can have A and B join a conspiracy and then later some time during its existence the defendants join it and that's all you need.

MR. MARCUS: I join in that exception.

MR. KLEIN: I guess we all join.

THE COURT: I have already rejected a charge proposed by Mr. Klein, I believe, that I charge that there can't be a conspiracy unless one or more defendants created or formed it or something. I refused to charge that.

MR. BRILL: I respectfully except.

MR. KLEIN: I also ask your Honor to charge and apply the double inference rule to any unidentified bank withdrawal or deposit. In other words, the government pointed out, here is a $50,000, here is a 50,000, here is a 42,000. It could have come from there. It could have come.

I say there is a double inference rule at that point. Merely from a bank number alone, you can't draw an inference that that's where it could have come from.

THE COURT: I won't charge that. That is circumstantial evidence, which I charged generally.

MR. KLEIN: Wouldn't you charge if it circum-

stantial, if there are two hypotheses, you must accept the one consistent with innocence specifically applied to that?

THE COURT: No, I don't want to single out any number.

MR. KLEIN: Would your Honor charge as a matter of law there is no proof of depreciation of Cadgie Taylor assets as a matter of law by any $40,000 payment?

THE COURT: No.

MR. BRILL: Could I interject there, your Honor?

I got the impression, and I could be in error about this, but I thought your Honor said that there was proof in the case or at least the government contended that the $40,000 came out of the proceeds.

THE COURT: Yes, the government contends it, that's right. That's all I said. I am leaving it to the jury. I have already ruled on the evidentiary question.

MR. BRILL: In that context and in order to balance the charge in respect to that, it seems to me and I respectfully request your Honor instruct the jury that it is the defendants' contention that it did not come out of the proceeds.

THE COURT: I said that.

MR. KLEIN: You said it is the defendants' contention no payment was made, but not that it came out of

any particular place.

THE COURT: You can't do it hypothetically.

The reason I didn't perhaps do it so specifically is it wouldn't be fair to the defendants because it would create an implication that there was $40,000 but that it didn't come out of Cadgie Taylor.

MR. BRILL: But in the context in which your Honor did charge it, it generates an impression. You know, realistically, when a court gives its charge to the jury, the whole case turns because jurors, being layment and having the regard for the Court which they ordinarily and usually have, get impressions which are not conveyed to professionals, and I got the impression, trying to put myself in the posture of a juror, that in that particular context that, well, maybe this money did come out of the proceeds.

I know that your Honor did say at a later time that it is the defendants' contention that no payment was made.

THE COURT: That's right. So it couldn't come out --

MR. BRILL: As a matter of fact --

THE COURT: I gave you the benefit of every break on that one.

MR. KLEIN: May I continue, your Honor?

* * *

"I do not understand your question. Please write what you want more clearly."

I think that is fair to everybody. I don't know what else I can do.

MR. KLEIN: That's fair.

I found the section in the minutes where your Honor had directed that the two items on the Caddie Taylor account --

THE COURT: Give me the page. Don't give me a whole speech.

MR. KLEIN: The only thing is, the reporter is not taking anything. 1872. It is about deletion of the two items 35,000 and 50,0 . 1990 talks about unmasking the 50,000 and leaving the 35,000 still masked.

THE COURT: What page?

MR. KLEI . 1872 is the culmination of a long colloquy which results in your Honor agreeing to delete the 35 and the 50, to mask them.

THE COURT: On 1872 I don't see anything.

MR. KLEIN: You directed the deletion of both items.

THE COURT: I have it in front of me. I don't see anything about it.

MR. KLEIN: It is in that colloquy that runs from

1860 to 1872. It might be 1871. It is around the middle of the page somewhere, just above the middle.

THE COURT: Which pages have you got? There were several colloquys.

MR. SAGOR: The one I used as guidance is 1502, which is earlier than that.

MR. KLEIN: That was the first one, your Honor, when you permitted it in. 1871, your Honor. It is the second paragraph, the end of it.

THE COURT: I was cut off here. The reporter didn't get the full thing.

MR. KLEIN: If you read the preceding colloquy, in 1990, as proof of it, where Mr. Sagor again brings up the point, in view of the fact that the $50,000 withdrawal from the American Trust Company was explained as a transfer from the Sierra account, and then he came up with the 50,000 from the Cadgie Taylor Phoenix account and said this is a different 50,000, and your Honor said under those circumstances you would permit him to unmask the fifty because he says in fact both were marked.

MR. SAGOR: You asked to mask these two deposits, the 35 and 50. Then, later on, after that, you said, "All right. The fifty is okay". That left the 35 to be masked.

On page 1990, your Honor said, "I will let you [illegible]

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MR. KLEIN: And they can continue to look at it.

THE COURT: What do you want me to do about it?

MR. KLEIN: Give further instructions to the jury that they are not supposed to consider that 35.

THE COURT: In what connection?

MR. KLEIN: In any connection in which they might consider it. It is not in the case. It was supposed to be masked.

THE COURT: Where do you see it was masked? I haven't seen that page reference.

MR. KLEIN: They both were supposed to be masked, the 35 and the 50. You lifted the masking from the 50.

MR. SAGOR: They were never physically masked. My understanding was when Miss Hepola got on the stand there were no masks on the number.

THE COURT: They couldn't be, because you couldn't ask about it if it was masked. That was my understanding.

MR. SAGOR: That is right. That is my understanding.

THE COURT: I am very careful. When I have exhibits asked for by a jury, I don't generally use my own judgment. I discussed it with you gentlemen at great length. I let you look at all the statements sent in. After I send them in, you wake up.

her about the 50,000. That's all."

THE COURT: I said at 1993, "I will let him ask, in view of the fact that there are two 50,000s."

Mr. Klein says, "Doesn't the mask stay on?

"THE COURT: How can it stay on and he can ask at the same time?"

MR. KLEIN: That is the fifty.

THE COURT: The 35 I don't recall specifically unmasking. What is the problem.

MR. KLEIN: In 1992 you say this --

MR. SAGOR: That's why we are here. "Now that you will allow me to inquire about the 50,000, may I inquire about the 35,000?

"THE COURT: No, because we know the answer to that."

You wouldn't let him ask about that.

At the bottom of the page, I say, "The mask stays over the fifty?"

THE COURT: Where is the exhibit now?

MR. KLEIN: It's in the jury room.

THE COURT: Why didn't you call my attention to it before?

MR. KLEIN: I did. On the telephone you said, "Find the page for me first." I spent all this time trying to find the page.

THE COURT: I tried to get you to come up to chambers with the court reporter and make your objection, and I would consider it.

MR. KLEIN: You didn't tell me that. Mr. Sagor read a page to you, and you said, "That's it."

THE COURT: You didn't even raise the question. It's too late.

MR. KLEIN: I raised the question as soon as I found out. Your Honor instructed Mr. Sagor to mask the 35.

I ask for the withdrawal of a juror and the declaration of a mistrial. The jury now has a document not in evidence.

THE COURT: I didn't say it is not in evidence.

MR. KLEIN: The 35,000 is supposed to be covered.

THE COURT: I gave you the benefit of the doubt, because in a normal case like this I would have the right to have allowed Mr. Sagor to cross-examine on the 35,000 to prove that it went into Mr. Ridland's bank account. I have leaned over backwards for the defendants in this case, and it is not that material, so I am not going to declare any mistrial.

MR. KLEIN: It is material in that it shows --

THE COURT: The jury wants the annual report to the SEC on sale of stock from Ridland, signed by Ridland, possibly Number 33, Government's Exhibit.

MR. KLEIN: 32. That's what I said.

This jury has been there for an hour with that piece of paper. It is not my responsibility to mask that paper. I thought it was Mr. Hughes' or Mr. Sagor's to mask it.

THE COURT: Don't make a big deal out of it. It is not that important.

MR. KLEIN: I think it is. It shows availability of funds from which the $40,000 could have been paid.

MR. SAGOR: I think it is 31.

THE COURT: What is 32?

MR. SAGOR: 32 series. That's the registration statements and the amendments.

THE COURT: What is 31?

MR. SAGOR: 31 is that statement that the thing was filed.

MR. KLEIN: 10-K.

THE COURT: I think that is what they want. Also, 33 is the annual report of Sierra Mining for Cadgie Taylor.

MR. SAGOR: It indicates it is sold by at least October 31, 1970.

THE COURT: Send them both in.

MR. KLEIN: They didn't ask for them.

MR. MARCUS: Are they both signed? Didn't they

ask for the report that is signed?

THE COURT: I will send in 31 and 33.

MR. KLEIN: I will object to 33, because the jury didn't ask for it, your Honor.

THE COURT: They asked for it by number. 33, they said here.

MR. KLEIN: They said the 10-K. Before, you said the numbers don't mean anything.

THE COURT: It is in evidence. I am sending it in.

MR. KLEIN: I object to that and ask for the withdrawal of a juror and the declaration of a mistrial.

THE COURT: Send them in, Mr. Hughes.

MR. KLEIN: Mr. Sagor marked it during summation, your Honor.

MR. BRILL: He marked an exhibit in evidence after it was received.

MR. SAGOR: On the record, gentlemen, in front of the jury, and I am putting a pen around it. That was said in oral argument, on the record.

THE COURT: It will be helpful to them if they are looking for that, in any event.

MR. KLEIN: What are we going to do about that now? It is still in front of the jury.

THE COURT: You have your exception.

That is not my problem. I can't do anything about it.

MR. KLEIN: I assumed the Court's directives have been carried out. I have carried out your Honor's directives, whatever they have been. Your Honor's direction was to mask it.

THE COURT: Where did I direct that? Show me the page.

MR. KLEIN: You were cut off at one point. Mr. Sagor later admits they were supposed to be masked, both of them. There was an admission there. You have the recollection of other counsel, who were all in the robing room at the time, your Honor.

THE COURT: Show me the page.

MR. KLEIN: I just showed it to you.

THE COURT: What page is it?

MR. KLEIN: At 1990, there is an admission by the prosecutor that 35,000 and 50,000 on that Cadgie Taylor monthly bank statement exhibit were to have been masked, and thereafter your Honor then directed that the 50,000 be permitted to be explored, which still left the mask on the 35,000.

It wasn't an error that it got in to the jury. Mr. Sagor said neither one of them should have been masked. The

specific language is:

"MR. SAGOR: You asked to mask these two deposits. The 35 and the 50."

THE COURT: I said in another place in the record -- I remember distinctly -- that as long as I don't allow it to be shown, this 35,000, as having gone to Mr. Ridland's personal account, that there was no harm in it. I remember saying that distinctly, and I repeat that again. I don't see any harm in it. I just didn't want the prosecutor to sum up on a theory that Mr. Ridland stole some money, because I didn't feel there was enough evidence as to that, and it would have been prejudicial.

But I did allow it to be shown as a bank record not connected with any alleged embezzlement by Mr. Ridland.

MR. KLEIN: It does go to show availability here.

THE COURT: Availability I allowed. What happened was, it was obviously not masked, because at 1992 Mr. Sagor said, "Now that you will allow me to inquire about the 50,000, may I inquire about the 35,000?"

The Court said, "No, because you know the answer to that."

In other words, I was again protecting Mr. Ridland from her answering that it went to Mr. Ridland's private account.

MR. KLEIN: If your Honor will recall, when I asked Miss Hepola the questions, I was just about to ask her, is she aware of any checks that went to Mr. Rilland, any sizable sum, and I stopped. I didn't ask it. I was afraid she would say 35,000, and then we would open the door.

THE COURT: Now you are starting a whole argument with me. I say, if you look at 1992 and 1993 with the colloquy there about the 50,000, you did not ask specifically that the 35,000 be masked, which is what you should have done, if that is what you wanted.

MR. KLEIN: If you look at 1992, Mr. Klein says, "The mask stays over the 50."

Mr. Sabor said, "No."

The mask was supposed to have been over both before that colloquy started. We only spoke about removing it from the fifty.

THE COURT: The record will speak for itself.

MR. KLEIN: I am contending I am being prejudiced because they are looking at something that should have been masked and not brought to their attention. It is not an exhibit in this case.

THE COURT: I disagree with you.

MR. KLEIN: I think they should be instructed.

THE COURT: I don't find any record of my ordering

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the 35,000 to be masked, and if so, I don't think it is any substantial error.

MR. KLEIN: Then the pages where the colloquy -- page 1860 to page 1872 and the colloquy of which 1990 is a part, which runs up to 1994 -- I think, your Honor, it starts a few pages before it -- those were the highlights of the colloquy.

THE COURT: I know. I am saying I leaned over backwards to help your defendant, and now you are trying to intimate there is something more I should have done, which I don't see at all.

MR. KLEIN: My impression was it, should have been masked.

THE COURT: You should have asked it, and you should have had it done.

MR. KLEIN: I assumed it was done.

THE COURT: How can you assume it was done when you never asked for it? I am looking through these pages. I see no place where you say -- show it to me if you can find it.

MR. KLEIN: There is an admission by Mr. Sagor. You first said you are issuing directions to eliminate it, on page 1871. Then, later on, we have an admission by Mr. Sagor that they were to have been masked on 1990.

Here you are. 1871.

"To me, it is a little remote. I will allow the American Bank & Trust Company, and I am going to instruct them to eliminate -- get me the numbers of the exhibits."

Now, from a reading of the preceding portion of that colloquy, your Honor, there is no question your Honor is referring to the 35,000 and 50,000.

THE COURT: What page is it?

MR. KLEIN: 1871. It is from a colloquy that started on page 1862. Your Honor will see at 1862 I am talking about withdrawals of 35,000 and 50,000 dollars. That's where it starts.

It may refresh your Honor's recollection. 35,000 which Ridland put into his bank account for a while, and the 50,000 which went to exploration.

THE COURT: I cannot find anything like that that you say is a specific direction by the Court.

MR. KLEIN: How about the admission by Mr. Sacer at 1990, when Mr. Sacer says specifically, "Your Honor, you asked to mask these two deposits, the 35 and the 50." And then he went into arguing about the 50, and then your Honor sustained the argument on the 50 and re-opened it on the 50 and permitted the mask to be taken off the 50.

Then we asked you about the 35, and you said, "No, no. I ruled on the 35." So it was status quo. The

status quo was, it was supposed to have a mask on it.

THE COURT: You are supposed to watch your exhibits. You agreed to send it in to the jury as it was.

MR. KLEIN: I assumed that the responsible court officers, either Mr. Hughes or Mr. Sagor, did what your Honor said they were supposed to do.

THE COURT: You are also supposed to keep your eyes open.

MR. KLEIN: I called your Honor's attention to it as soon as I found out, and you told me, "Go find the page first." I found the page, and it is still the same.

I don't think it should have been offered in evidence with the mask off it.

THE COURT: No; I don't agree with you. I am quite clear I said it couldn't be inquired into of the witness Miss Hepola, because we knew what the answer would be. I refused to allow the Midland personal account to go in, and I said I would instruct the jury it was not in evidence. But I don't believe stopped the account itself from having the 35,000. I could be wrong, but that is my recollection.

In any event, I am not going to take it back, because I don't think it is substantial.

MR. BRILL: I think it is regrettable that this developed as it has occurred, but I think I must join in the

motion for the withdrawal of a juror and the declaration of a mistrial.

THE COURT: I expected you to. You should. You should, too.

MR. MARCUS: I do.

THE COURT: Denied.

Before I go upstairs, Mr. Klein, if you want to say anything, say it now.

Do you have anything more to say to me, not repeating?

MR. KLEIN: Not to repeat it, except I think it is a matter of substance, your Honor.

THE COURT: Don't repeat.

MR. KLEIN: I am not repeating.

Have you got any other subject you want to tell me about?

MR. KLEIN: That is the only subject, and I think it is regrettable that whoever was responsible for masking it didn't mask it.

THE COURT: That is the same subject.

I want to go upstairs now.

(Pause.)

THE COURT: There is another note.

"May we hear Mr. Schiffman's direct testimony in

* * *

in length, of Arnold Widlitz, signed by him on June 20, 1973; 3551-B, a photocopy of handwritten statement of Arnold Widlitz, consisting of five pages signed and dated by him June 20, 1973; 3588, copy of an indictment bearing Number 73 Cr 1133, entitled United States versus Arnold Widlitz, together with a waiver of indictment, witnessed by Richard P. Wynn, counsel for Arnold Widlitz.

(At 6:15 p.m.)

(In open court: jury not present.)

THE COURT: Gentlemen, I have another note from the jury:

"Is the stock considered sold prior to cash payment being received by the respective underwriter?"

I think the best thing to do is to re-charge the salient portions of my charge and see what happens. I will see whether that is what they want. I think it is.

Get the jury in.

Does anybody have specific suggestions before I get them in?

MR. KLEIN: I think they want a specific answer. It is our contention the stock could be sold and the payment made later.

THE COURT: I don't consider that very helpful.

Go ahead and get them.

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MR. KLEIN: Would your Honor try to limit it to [illegible] portion -- If I remember your Honor's charge, you go into a tangent.

THE COURT: Don't you want me to mention your contention also?

MR. KLEIN: Yes. I want you to say that. I don't want to leave my contention out at this point.

THE COURT: I am also going to say what I said about it in the charge.

(Jury in box:)

THE COURT: I have a note, ladies and gentlemen of the jury, from you, which says:

"Is the stock considered sold prior to the cash payments being received by the respective underwriter?"

Now, I charged you on that, earlier. You will recall that I called your attention to the fact that the first page of the prospectus says that all the stock has to be sold within 120 days.

I also called your attention to the fact that in the registration statement, which included the underwriting agreement between Feis Securities and Cadgie Taylor, it was provided that all the Cadgie Taylor securities had to be sold and paid for by October 4th, under that registration statement that was filed with the Commission.

I charged you that if you fi[nd] that was not accomplished by October 4th, then there was an obligation to return the money paid by the investors and to stop selling the Cadgie Taylor st[o]k.

I also told you that that is not the basic issue in the case. I told you that if you find -- and I will repeat what I said -- I said that there is evidence in the case that the prospectus said that the issue had to be sold within 120 days or the buyers would have to get their money back. That is what I just reminded you about.

The Government says that the Cadgie Taylor stock was not sold within 120 days, by October 4th, and that the money should have been given back to the buyers.

Then I said, if you find these to be the true facts, you may consider whether they are evidence of an intent on the part of the defendants or any of them to engage in the fraudulent scheme and the unlawful conspiracy charged by the Government. But I repeat, if you find that the $40,000 payment in cash, or approximately $40,000, was not made, then you should acquit the defendants.

If you find that such a payment was made, and you believe the testimony of Schiffman, Bassani and Widlitz, then it doesn't matter whether or not the money had to be paid by October 4th. It is only another bit of evidence which

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you can either accept or reject. But the basic issue comes back to that simple question: was there a payment, a secret payment, of $40,000, with all the other elements I gave you before, with an intent to conceal it, with an intent not to put it in the prospectus, with an intent not to tell any of the customers of the securities.

That is the crucial issue here, and that depends to a large extent, or perhaps entirely, on the credibility and believability you have in the witnesses who testified for the Government. You saw them; you watched their demeanor on the stand; you listened to them; you were in a position to determine the likelihood of their telling the truth -- I am not going to repeat it all over again -- and the fact whether they have a motive to testify, and that your issue, as I put it to you, is whether or not they, because of that motive, are lying, for some reason, to save themselves, or whether they decided to make a clean breast of it in this matter.

That you can test by other circumstances in the case as you find them to exist in your own mind.

You will recall also that the defendants have contended that the sale was actually effected by the October 2nd or 4th purchase by Kelly, Andrews & Bradley of the Cadgie Taylor stock, or 100,000 shares of it, and you may recall -- and I will remind you of it -- that I said to you that if you

-- well, first I said that the testimony of the Government witnesses, Schiffman particularly, was that all this was a fake and that it was only for the purpose of purpirting to extend the 120 days.

But then I told you that if you disbelieve Schiffman and think that there was an actual purchase by Kelly, Andrews & Bradley of 100,000 shares, which they didn't pay for, then I told you that when it says that the stock had to be sold and paid for in the registration agreement within 120 days -- registration statement: that means by the public and not by somebody like Kelly, Andrews & Bradley, who in turn were going to sell it to the public -- that is not what was meant by the 120 days.

Also, I indicated to you that as a matter of law if Kelly, Andrews & Bradley had actually bought the stock, then they would have had to show it by an amendment to the prospectus that they had now become the underwriter and were selling the stock for their own account to the public, which, of course, was not done.

So, to avoid making this more complicated than it might appear, I have indicated to you the measure with which you can use the question of whether or not the sale was within the 120 days. It is merely evidence on intent, offered by the Government. I have allowed it for no other reason, and

I repeat that that finding alone is not enough to convict the defendants beyond a reasonable doubt, that you would have to find as an issue in this case beyond a reasonable doubt what I earlier said about the $40,000 cash payment and its purposes, which I won't repeat again. Of that you must be convinced, as I said, beyond a reasonable doubt.

Now, do you think if I keep you another half hour you may be able to reach a verdict on some counts?

THE FORELADY: You mean, just one of the defendants?

THE COURT: One defendant or one count or any partial verdict.

THE FORELADY: We have reached a verdict as far as one defendant is concerned.

THE COURT: You say you have reached a verdict on one defendant?

THE FORELADY: Yes.

THE COURT: On all counts?

THE FORELADY: Yes, your Honor.

THE COURT: I will take that verdict. Have you got it written on your sheet?

THE FORELADY: We didn't bring it out.

THE COURT: Give them a sheet, and you can mark it, and then you can tell us. Mark it and pass it around to the other jurors to see if they agree with you. They can not

* * *

UNITED STATES OF AMERICA

vers 73 Cr 659

JOHANNES STEEL et al.,

Defendants

New York, N. Y.

January 23, 1974 - 10:00 a.m.

(Trial continued.)

(In the robing room:)

MR. KL : Your Honor, I want to cover the record. Note my exception and Mr. Marcus' exception to the timing of the dismissal of the jurors last night. I felt it halted the momentum of acquittal and aborted the request for instructions.

The timing as such that they had come in and asked for instructions. I believe your Honor asked whether they were able to agree on anything or anyone, and they said yes. They gave a verdict of acquittal on that one, and immediately, without having them go back and consider the instructions your Honor had just given them, which they had requested, your Honor dismissed them.

THE COURT: I asked them, "Do you think within the next twenty minutes you can reach any further results?" -- and they said, "No." Don't you remember that?

MR. MARCUS: Mrs. Granville, Number 1, shook her head.

THE COURT: They all shook their heads.

MR. SAGOR: Negatively.

THE COURT: My practice is not to keep jurors beyond six-thirty.

MR. KLEIN: Fine. I never had the pleasure of appearing before you before. I didn't know whether this was a departure from practice or whether this was your practice.

THE COURT: I am afraid to let the women go out at night in this neighborhood. That is why I let them go at six-thirty. Otherwise, I would keep them until midnight.

You are right to put these things on the record.

MR. MARCUS: I join on behalf of Mr. Feis as well.

(3:00 p.m. in open court, jury not present.)

THE COURT: Does anybody have any objection to my calling the jury in and trying to find out where they stand and whether they need any help?

MR. KLEIN: I think if they needed help they would ask. I personally feel it should be left alone.

THE COURT: I expected that answer from you. It has been consistent. Anything I suggest you won't acquiesce, and keep your record. It's all right with me.

MR. KLEIN: I am doing my duty to my client.

MR. MARCUS: I join Mr. Klein.

THE COURT: All right. So sit and stew outside for a while.

MR. KLEIN: Outside?

THE COURT: Inside, outside, I don't care where you go.

jgrf 3 pm 1 437a

(4:00 p.m.)

THE COURT: All right. In United States against Ridland and Feis, I am going to call the jury in now to find out where they stand. They have been out now about 12 hours, I guess, of actual time.

MR. MARCUS: Your Honor, may I be heard? I would object at this point to calling the jury in.

THE COURT: The objection is overruled.

Get the jury in.

MR. KLEIN: May I join in that, your Honor?

THE COURT: You may join in that.

THE MARSHAL: Your Honor, the jury has requested a few minutes. They say they will have reached a verdict if you give them a couple of minutes.

THE COURT: Oh, sure. Tell them to take some time. I just thought they might need some help, some instructions. Just tell them that.

(Pause.)

THE MARSHAL: They are ready, your Honor.

THE COURT: All right.

(Jury present.)

THE CLERK: Members of the jury, please answer to your presence as your name is called.

(Roll called - all present.)

BY THE CLERK:

Q Mrs. Granville, have you agreed upon a verdict?

A Yes, we have.

Q What is your verdict as to the Defendant Feis on Count 1 of the indictment?

A Count 1, Feis guilty.

Q As to the Defendant Ridland on Count 1?

A Guilty.

Q On Count 2, Defendant Feis?

A Guilty.

Q Defendant Ridland on Count 2?

A Guilty.

Q As to Count 3, Defendant Feis?

A Guilty.

Q Defendant Ridland on Count 3?

A Guilty.

Q On Count 4, Defendant Feis?

A Guilty.

Q Defendant Ridland on Count 4?

A Guilty.

Q On Count 5, Defendant Feis?

A Guilty.

Q Defendant Ridland?

A Guilty.

GOVERNMENT'S EXHIBIT 40A.

FIRST NATIONAL BANK OF ARIZONA
ROSENZWEIG CENTER OFFICE
PHOENIX, ARIZONA

6670-03490 CADDIE TAYLOR CO
C-O BERNICE HEPOLA
[illegible]
PHOENIX AZ 85013

11 12 70

DATE	DEPOSITS	WITHDRAWALS		ENDING BALANCE
				6892154
11 03 70		3500000	5000000	2686686
11 05 70		6468	4200000	685686
11 06 70		2000000		406686
11 09 70		279000		

6	15392154	14985468	406686

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JUDGMENT OF CONVICTION.

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT FILED MAR 7 19[illegible] S.D. OF N.Y.

United States of America

v.

G. CAUGHEY RIDLAND

No. 73 Cr. 659 HFG

On this 7th day of March, 1974 came the attorney for the government and the defendant appeared in person and[1] by Irwin Klein, Esq., counsel.

IT IS ADJUDGED that the defendant upon his plea of[2] not guilty and a verdict of guilty by a Jury

has been convicted of the offense of unlawfully, wilfully and knowingly combining, conspiring, confederating and agreeing to violate rules and regulations promulgated by the United States Securities and Exchange Commission under the Securities Exchange Act of 1934 (Title 18, United States Code, Section 371.); unlawfully, wilfully and knowingly and by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly employing devices, schemes and artifices to defraud. (Title 15, United States Code, Sections 77q(a) and 77x; Title 18, United States Code, Section 2.)

as charged[3] in counts 1, 2, 3, 4, 5 & 6

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] THREE (3) YEARS on each of counts 1, 2, 3, 4, 5 & 6 to run concurrently with each other. Pursuant to Section 3651 of Title 18, U. S. Code, as amended, with provision defendant be confined in a JAIL or TREATMENT type institution for a period of FOUR (4) MONTHS as provided in the aforesaid section. Execution of remainder of sentence is suspended and the defendant is placed on probation for a period of TWO (2) YEARS and EIGHT (8) MONTHS, to commence upon expiration of confinement and subject to the standing probation order of this Court.

~~It is adjudged that~~ The Court requests the cooperation of the Probation Department to arrange for defendants supervision in the Dominion of Canada.

FILED MAR 14 1974

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

~~The Court recommends commitment to~~

United States District Judge.

Clerk.

[1]Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2]Insert (1) "guilty and the court being satisfied there is a factual basis for the plea." (2) "not guilty, and a verdict of guilty." (3) "not guilty, and a finding of guilty." or (4) "nolo contendere," as the case may be. [3]Insert "in count(s) number " if required [4]Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5]Enter any order with respect to suspension and probation. [6]For use of Court to recommend a particular institution.

NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

- -X

UNITED STATES OF AMERICA,

against

G. CARMAN RIDLAND AND ROBERT FEIS,

Appellants.

- -X

NAME AND ADDRESS OF APPELLANT, G. CARMAN RIDLAND: Suite 108, 3661 Maryland Parkway, Las Vegas, Nevada 89108.

NAME AND ADDRESS OF APPELLANT, G. CARMAN RIDLAND'S ATTORNEY: Irwin Klein, P.C., Two Park Avenue, New York, N.Y., 10016.

OFFENSES: One count of conspiracy to violate 15 U.S.C., 77 Q and 77 X and five counts of security fraud under 15 U.S.C., 77 Q(a) and 77 X.

CONCISE STATEMENT OF JUDGMENT: Appellant, G. Carman Ridland, was sentenced by Hon. Murray I, Gurfein, on March 7, 1974 after a jury verdict of guilty on all counts to imprisonment for a term of three years upon the

condition that he be confined in a jail-type or treatment institution for four months; the execution of the remainder of the sentence of imprisonment was suspended and he was placed on probation for a period of two years and eight months upon the terms of the standing probation order of the Court.

BAIL STATUS: Appellant, is at liberty on his own recognizance pending outcome of the appeal.

The appellant, G. CARMAN RIDLAND, hereby appeals to the United States Court of Appeals for the Second Circuit from the above-stated judgment.

Dated: New York, New York,
March 15, 1974.

Yours, etc.

IRWIN KLEIN, P.C.,
Attorney for Appellant, G. Carman Ridland,
Post Office and Office Address,
Two Park Avenue,
New York, N.Y. 10016
MU 3-0054 (212)

TO: PAUL J. CURRAN, ESQ.,
United States Attorney

CLERK OF THE COURT

Services of three (3) copies of
the within is
hereby admitted this day
of , 197

Attorney for